

**Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI**

+WP(C) Nos.12130-39/2004, 550/2005 and 166/2006

Date of Decision: 20-12-2007

#Smt.Kiran Juneja & Ors.
No.12130- 39/2004

.....Petitioners in WP(C)

Mrs.Karunesh Gambhir
No.550/2005

.....Petitioner in WP(C)

National Council for Education
Research and Training
!

....Petitioner in WP(C) No.166/2006
Through: Mr.Rakesh Khanna,
Senior Advocate with
Mr.Reetesh Singh and
Ms.Shailja Sinha for the petitioners
in WP(C) No.12130-39/2004.
Mr.Shyam Babu for the petitioner
in WP(C) No.550/2005.
Ms.Haripriya for the petitioner in
WP(C) No.166/2006.

Versus

\$Union of India & Ors.
^

.....Respondents
Through Mr.Suresh Kait for the
UOI in WP(C) No.12130-39/2004.
Mr.Dalip Mehra for the UOI
in WP(C) No.550/2005.
Ms.Haripriya Padmanabhan
for the respondent/NCERT.
Mr.V.K. Tandon for Delhi Police.

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR.JUSTICE VIPIN SANGHI**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. All these writ petitions cover the same canvass of facts and the legal issues raised are also common. In fact, the judgment of the Central Administrative Tribunal (in short 'CAT'), which is impugned is common by which OAs filed by different persons were decided. To have the glimpse of the issue involved, we may point out at this stage itself that recruitment for the post of Assistants was done by the National Council of Education Research and Training (in short 'NCERT') and the petitioners herein appointed. Some of the persons, who could not be selected and were aggrieved, challenged the entire selection process on the ground that there were large scale irregularities and bungling in the selection process. Their OAs are allowed by the impugned judgment dated 22.7.2004 holding that the selection process is vitiated due to large scale illegalities and irregularities. This finding is based on the inquiries conducted by a committee formed by the Department, which was asked to go into the complaints of irregularities etc. received by them. As a consequence, the selection of the petitioners herein is quashed. We may

point out at this stage itself that in so far as official respondents/Department is concerned, they have accepted the judgment and do not wish to go ahead with the appointments/recruitment based on such selection. We may also point out that though the petitioners herein are not seriously contesting the report of the committee, which went into the allegations and found the bungs, their case is that they are not concerned with any such irregularities allegedly found and even as per the report, they cannot be treated as beneficiaries of the illegalities. Therefore, after taking note of the facts in brief as well as the illegalities found in the selection process, main scope of this petition is to consider as to whether the petitioners herein can be treated as a separate class unaffected by the illegalities and, therefore, be given benefit of their selection for the purpose of appointment.

2. For the sake of convenience, we will, in the first instance, take note of the facts appearing in WP(C) No.12130-39/2004. The learned Tribunal has, in the impugned judgment, given a succinct description of these facts and, therefore, without any fear of error, we can bank upon those facts in reproducing the same hereinafter.

Respondent Nos.3 and 4 were working as LDCs in the NCERT at the relevant time, i.e. in the year 2001-02. The selection process for the post of Assistants was initiated by the NCERT through notification issued in the 'Employment News' notifying 40 vacancies in the said post. Whereas 21 posts were meant for general candidates, 6, 3 and 10 posts were reserved for SC, ST and OBC candidates respectively. The scheme of examination consisted of written test, objective type test and an interview to test the knowledge of computer. A total number of 525 candidates appeared in the written examination. Results were declared and respondent Nos.3 and 4 also found their names in the merit list. Against 40 vacancies, which were available for being filled up, a list of 56 candidates was prepared, but ultimately approximately 100 candidates were called for interview.

3. Before the Selection Committee could process the appointment, on an anonymous complaint received, Prof. Ved Prakash, Head, DEME was entrusted investigation into various illegalities committed during the course of selection process. In this report, scrapping of the entire examination has been recommended on account of glaring

illegalities, which rendered eligible candidates into ineligible and vice-versa, to uphold the majesty and prestige of the organisation. The qualifying marks for general category candidates were 40 and for OBC, SC and ST were 32. In consultation with Prof. Ved Prakash and the Controller of Examination, out of 26 recommended candidates, 18 were recommended for appointment. Rest of them were deleted. At this stage, respondent Nos.3 and 4 filed OA No.1823/2002 assailing the said selection. After examining the matter, the learned Tribunal pronounced its judgment dated 9.12.2002 setting aside the said selection finding large scale illegalities in the selection process. Some of the persons, who were selected and appointed on the basis of the said selection, filed WP(C) No.1134/2003 in this Court primarily on the ground that they were not even made parties in the said OA filed before the Tribunal. Interim order dated 14.2.2003 was passed directing that the order of termination passed on 31.1.2003 on the basis of the impugned judgment of the Tribunal, be not given effect to. This writ petition was ultimately decided on 29.7.2003 whereby order of the Tribunal was set aside with liberty to

the petitioners in the said petition to be impleaded as party respondents and the matter was remanded back to the Tribunal for consideration afresh. It would be pertinent to point out at this stage that when the writ petition was filed against order dated 9.12.2002, though termination of the petitioners herein was stayed, there was no stay given in so far as impugned judgment of the Tribunal is concerned. Since by that judgment selection was quashed, the NCERT initiated fresh selection process. In this, respondent Nos.3 and 4 participated but could not be appointed. Nineteen candidates were selected and two of them were issued the offer of allotment. However, the said offer of appointment was subject to final outcome of the OAs and the writ petitions. This selection process was also challenged by filing OA No.1442/2004 on the same ground, namely, that the process was vitiated by illegalities.

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	General	OBC	SC	ST
Minimum Qualifying score in D.P.	40	32	32	32

-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.

-See Table-2& 3

Table-2

No. of Candidates called for Interview		
No. of candidates with altered marks	No. of candidates without altered marks	Total
21	83	104

Table-3

	General	OBC	SC	ST
Total Number of Candidates called for interview	55	23	25	1
No. of candidates with minimum qualifying marks- 40 for Gen. & 32 for others in D.P.	32	3	2	-Nil-
% of candidates bunching at the qualifying score	58	13	8	-Nil-
Of the total Number of 510, No. of candidates who have been pushed to the qualifying score	20 (36%)	4 (17%)	2 (8%)	-Nil-

-That of the total number of candidates called for interview, 32 out of 55 (58%) in general category, 3 out of 23 (13%) in OBC, and 2 out of 25 (8%) in SC category were found to

be awarded minimum qualifying marks. It is quite alarming that 58% of the cases in general and 13% in OBC category got bunched at the minimum qualifying score of 40-a phenomenon which is highly improbable in such a situation.

-That there are quite a few candidates who have secured more than 40 marks in the Descriptive paper. Some of them have got as high a score as 50, 48, 47, 46 etc. When marks of such candidates are seen in relation to their marks in the paper of Rules & Regulations, it is observed that their corresponding marks are much lower in that paper as against those candidates who have just been awarded the qualifying score of 40 after alteration in the Descriptive paper. Strangely candidates with qualifying score of 40 in Descriptive paper have secured as high a score as 97, 90, 89 etc. in the rules and regulations paper as is evident from Table 3.1.

Table 3.1

Table3.2

Ten cases with lowest qualifying marks in DP and their corresponding marks in Rules & Regulation Paper

Ten cases with highest marks in DP and their corresponding marks in Rules & Regulation Papers

S.No.	Roll No.	Marks in DP	Marks in R&R		S.No.	Roll No.	Marks in DP	Marks in R&R
1	98	40	97		1	549	50	60
2	227	40	90		2	750	46	66
3	31	40	90		3	624	46	68
4	512	40	89		4	8	47	67
5	311	40	82		5	841	47	77
6	199	40	77		6	321	48	83
7	808	40	82		7	898	44	68
8	689	40	76		8	613	44	73
9	718	40	77		9	632	43	70
10	403	40	77		10	19	43	69

-That the data posted in table-3.1 strangely reveal that candidates getting highest & higher scores in rules & regulations papers have secured merely a qualifying score of 40 and that too after alteration.

-That the data clearly indicate that the examiner firstly seems to have arbitrarily identified those cases where the candidates have secured high scores in Rules & Regulation Paper but did not qualify in Descriptive paper

and subsequently altered their scores so as to enable them to qualify for the interview.

*-That furthermore, low degree of **correlation** between the scores of two papers shown in Table 3.1 and Table 3.2 confirms the aforesaid suspicion on the one hand and it also creates apprehension even beyond the boundaries of Descriptive paper on the other hand.*

*-That the aforesaid analysis of the data indicates **glaring** irregularities which would not withstand any test of scrutiny.*

*-That in such a situation when interviews have already been conducted, re-evaluation of the answer scripts of the Descriptive paper might render some of the **eligible** candidates into **non-eligible** zone and vice versa and thus will further mess up the entire issue and thus **compromise** the **credibility** of the organisation.*

*-That in view of the above, it is suggested that the entire examination may be scrapped and it may be rescheduled afresh because nothing is dearer than the **prestige** of the organisation.*

6. The aforesaid report leads to the following analysis, as indicated in the report itself:-

(a) out of 510 candidates, 104 were found eligible to be called for interview. In 26 cases the marks of descriptive paper were found altered and 21 out of these 26 candidates were pushed to scale the qualifying marks. In many cases, the marks awarded were minimum qualifying marks. These constituted 58% of candidates in general category and 13% in OBC category. Thus, 32 out of 55 in general category and 3 out of 23 in OBC category got minimum qualifying score, which, according to the committee, was a highly improbable phenomena in such a situation. The indication was that their score must have been pushed to achieve the minimum qualifying score to enable them to be called for the interview.

(b) many of these, who had been awarded just the qualifying score of 40 after alteration in the descriptive paper, scored as high score as 97, 90, 89 etc. in the rules and regulation paper.

(c) as per the committee, it appeared that the examiner first arbitrarily identified those

candidates, who had scored high marks in rules and regulation paper but had not qualified any descriptive paper and to make them eligible subsequently altered their score in the descriptive paper.

7. In such a situation when interviews had already been conducted, the committee opined that the re-evaluation of the answer scripts of the descriptive paper might render some of the eligible candidates into non-eligible zone and vice versa, which would further mess up the entire issue and thus, compromise the credibility of the organisation. Therefore, the committee suggested that the entire examination be scrapped to save the prestige of the organisation.
8. The Tribunal had also gone through in detail the said report and it has recorded its observations in the following words:-

“On perusal of the sheet, we find that there has been consistent rounding off marks, conspicuous missing signatures of evaluator and checker. The preliminary report during the pendency of this OA in respect of respondents clearly shows that there were illegalities in the process whereby rounding off marks and

signatures of the checker and evaluator were missing. In one of the cases the marks have been interpolated with someone making the candidate eligible. Not only the private respondents but the applicants' marks were also rounded off. Accordingly, on close scrutiny, the following illegalities have been found on a preliminary investigation carried out during pendency of the OAs:

“Upon close scrutiny of the answer sheets of the candidates named hereinabove, the following irregularities have been noticed:

DESCRIPTIVE PAPER:

1. Increasing of marks of some candidates.
2. Rounding of 1/2 marks.
3. Marks of Karunesh Sodhi who got 33 marks inter-changed with the marks of Sanjay Rohilla who got 41.

OBJECTIVE PAPER

1. Signature of the checker missing in all the objective paper answer sheets.
2. Signature of the evaluator missing in some objective paper answer sheets.
3. Marks written in pencil and some cutting in some objective paper answer sheets.”

9. The illegalities, which were pointed out in the preliminary investigation report, regarding the second examination are the following:-

“The bundle containing the answer sheets of 162 candidates handed over by Prof. V.K. Jain, Controller of Examinations, in sealed cover was opened and random checking of the same was conducted in the office of the LA, NCERT, and it was found that:

I: The GK Paper I (nos. 162) did not bear any marking 3 of the answer sheets (viz., of Roll nos. 5497 coded 242760, Roll no.6328 coded 243068 of Shri Uma Kant & Roll No. 6568 coded 243164) did not bear the signatures of the Superintendent of the Examination Centre.

II: The written Expression Paper II bore the markings, although in one bearing coded No.240054 there were overwritings on the marks allotted. There are overwriting in the marking with regard to Roll No. 6328 coded 243068 of Shri Uma Kant. In the case of Shri Ravinder Kumar coded 242272, the marks in one place had been reduced by overwriting.

III: The Rules & Regulation Paper III were examined at random and the answer sheet of the same coded No.240054 again bore overwriting on the marks. There are overwriting in the marking with regard to Roll No. 6328 coded 243068 of Shri Uma Kant.

The undersigned specifically

examined the answer-sheets of those GC candidates against whom there were specific complaints of manipulations, and at random checking the findings noted were found."

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 organisation.

11. On this basis, the Tribunal observed as under:-

“37. The preliminary report both of Prof. Ved Prakash and Capt. K.K. Joshi, VSO, NCERT, is an admission to the effect that both the selection processes had engrossed with material illegalities. We cannot by this standard weed out the beneficiaries of illegalities. The scope and zone of consideration was increased and ineligible persons have been inducted have found place in the list of appointed candidates. On presumption, we cannot draw any conclusion but the fact that both the selection processes incorporate an unfair selection process and glaring illegalities, we cannot expect such an action as fair. Rule of law shall have to prevail.”

12. The Tribunal also, while quashing the selection, expected that corrective measures would be taken by the official respondents. The Ministry of Human Resource Development was requested to fix the responsibility of the erring officials for appropriate action. We may point out at this stage that after the aforesaid observations the matter was got examined and final report submitted by the committee was placed before us at the time of hearing. In order to consider the question at hand, we shall refer the findings of this report at the appropriate stage.

13. As has been pointed out by us in the beginning that the bungling and irregularities, which are found by the Committee in its report, in the aforesaid selection process, are not disputed by the petitioners. The petitioners, however, say that they are not the beneficiaries of those malpractices and in so far as they are concerned, their appointment can be saved as it is not tainted in any manner. Therefore, the entire thrust of our discussion is to focus on the issue as to whether the alleged interpolations and irregularities had the effect on the appointments of the petitioners as well, and the answer to this would depend on the issue as to whether it would be possible to weed out the beneficiaries of the illegalities by separating the grain from the chaff.

14. Learned counsel for the petitioner had argued that the interpolations mentioned by Prof. Ved Prakash in his report had no effect on their appointments and for this reason, even in the said report the petitioners were cleared. It was also stressed that same was the position even in the second report and thus, both the reports had not pointed any finger on any of the petitioners. It was also submitted that the learned Tribunal failed to

appreciate that the names of the petitioners figure in Table 3.2 at serial Nos.3, 4, 5, 6, 7 and 9, which would show that they had scored good remarks in both the papers, i.e. descriptive paper and rules and regulation paper and there was no occasion for any of them to be given grace marks, nor any rounding off of the marks was needed for them to qualify the test. It was upon due scrutinisation of the papers that Prof. Ved Prakash as well as Prof. R.S. Saxena and Prof. G.L. Arora had carried out the weeding of persons who had benefitted due to grant of grace marks illegally and in the process of declaring eight eligible candidates ineligible. In the second report of Mr. K.K. Joshi, again it was brought out that in case of the petitioners, there was no such illegality detected, which leads to their selection being declared illegal. It was, thus, submitted that the Tribunal should not have quashed the entire selection process. Learned counsel for the petitioners relied upon the judgments of the Supreme Court in the following cases in support:-

- 1. Union of India Vs. Rajesh P.U. Puthuvalnikathu & another, 2003 (7) SCC 285.*

2. Umesh Chandra Shukla Vs. Union of India and Ors., AIR 1985 SC 351.

3. Harshendia Choubisa and Anr. Vs. State of Rajasthan and Ors., (2002) 6 SCC 393.

15. In Union of India Vs. 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 Vs. 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 Vs. 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.

17. As per the Preliminary Report, Paras Ram has only 39.5 marks which was rounded to 40, whereas in the case of private respondents they have scored well above the bench mark as applicable in their case (except Respondent No.8, whose case there was human error during coding and decoding of roll numbers).
18. Before discussing the case at hand, we may also take note of some more judgments of the Apex Court, which are referred to by the Tribunal as well. In Union of India & Ors. Vs. O. Chakradhar, (2002) 3 SCC 146, the Court opined that where the illegality and irregularity are so inter-mixed with the whole process of selection that it becomes impossible to sort out the right from the wrong or vice versa, then the whole selection process is to be

quashed. The Court had affirmed the decision of the authorities to cancel the selection and made the following observations in the process:-

“12. As per the report of the CBI, the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz., right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selected and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is

*difficult to separate the cases of some of the candidates from the rest even if they may be some. The decision in that case of **Christen Yadav** applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed."*

19. *Same course of action was adopted by the Supreme Court in Union of India and Ors. Vs. Tarun K. Singh and Ors., 2002 (3) ATJ 185, holding that process of selection stood vitiated by adoption of large scale malpractices to a public office. Relevant observations of the Court in this judgment are as under:-*

"4. The question for consideration is whether the learned single Judge of Allahabad High Court was justified in interfering with an order of cancellation passed by the competent authority and direct that the process of selection should be completed. Needless to mention that subsequent to the order of cancellation, in view of the allegation of malpractice, the departmental authorities have held an enquiry into the matter and the result of that enquiry has revealed gross irregularities and illegalities as referred to in the judgment of the Division Bench of Allahabad High Court. Consequently the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of Law. That apart, an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment. In the case in hand, much before the so-called list of

selection was approved by the Railway Board, the order of cancellation had emanated on the basis of the complaint received from so many quarters. In view of the subsequent findings of the enquiry committee which has gone into the matter, we have no hesitation in coming to the conclusion that the learned single Judge of Allahabad High Court was wholly in error in issuing the direction in question and, therefore, the Division Bench of Allahabad High Court was fully justified in interfering with the said order of learned single Judge of Allahabad High Court. The Division Bench of Calcutta High Court committed error in following the judgment of learned single Judge of Allahabad High Court. The judgment of Division Bench of Calcutta High Court is set aside and the judgment of Division Bench of Allahabad High Court is upheld. In the circumstances, we allow the union's appeals and dismiss the appeals filed on behalf of the individual candidates. The appeals are disposed of accordingly. Any other question of law remains open."

20. The Apex Court had the occasion to consider such an issue once again in a recent judgment entitled *Inderpreet Singh Kahlon Vs. State of Punjab and Ors.*, (2006) 11 SCC 356. 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 Vs. Umadevi, (2006) 4 SCC 1, 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.

24. It would be useful to refer to the following portion of the judgment wherein the Court had taken note of earlier judgment and discussed the ratio of those cases:-

“47. In *Bihar School Examination Board v. Subhash Chandra Sinha and Ors.*, (1970) 1 SCC 648 the court came to a finding that the high percentage of marks obtained by the candidates who appeared at the selection of the centre in question did give rise to a suspicion that unfair means had been practised and the Board was justified in investigating the case. While the High Court held that despite the same, the principles of natural justice was required to be complied with, this Court noticed the reports of the experts and came to the conclusion that the results thereof speaks for themselves. It was noticed Page 2452 that whereas in other centers the average of successful candidates was 50%, in the center in question, the percentage of passing in different papers were unusually high ranging from 70% to 100%. In that view of the matter, this Court held: (SCC p. 652, paras 12-13)

"12. These figures speak for themselves. However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source. Therefore the conclusion that unfair means were adopted stands completely vindicated.

13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

Such is not the case here.

48. In *Anamica Mishra and Ors. v. U.P. Public Service Commission*, 1990 (Supp) SCC 692, an error was found out at the stage of calling candidates for interview. This Court opined that as no defect was pointed out in regard to the written examination and the sole objection was confined to the exclusion of a group of successful candidates in interview there was no justification for cancelling the written part of the recruitment examination and the situation could have been appropriately met by setting aside the recruitment and asking for fresh interview of all eligible candidates on the basis of the written examination.

49. Yet again in *S.P. Biswas and Ors. v. State Bank of India*, 1991 Supp (2) SCC 354, the court refused to interfere with the result of the examination as it was shown that there had been neither any mass copying nor the final result was shown to have been influenced by the unfair means by any candidate.

50. In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event it is found to be an impossible or highly improbable, en masse orders of termination could have been issued.

51. 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.

52. We may, at this stage, notice that the following cases would fall in the different categories which are enumerated hereinbelow:

(i) Cases where the “event” has been investigated:

(a) *Union Territory of Chandigarh v. Dilbagh Singh*, (1993) 1 SCC 154, SCC at paras 3 and 7.

(b) *Krishan Yadav v. State of Haryana*, (1994) 4 SCC 165, SCC at paras 12, 15 and 22.

(c) *Union of India v. Anand Kumar Pandey*, (1994) 5 SCC 663, SCC at para 4.

(d) *Hanuman Prasad v. Union of India*, (1996) 10 SCC 742, SCC at para 4.

(e) *Union of India v. O. Chakradhar*, (2002) 3 SCC 146, SCC at para 9.

(f) *B. Ramanjini v. State of A.P.*, (2002) 5 SCC 533, SCC at para 4

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

(a) *O. Chakradhar* (supra)

(b) *Krishan Yadav* (supra)

(c) *Hanuman Prasad* (supra)

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

- (a) *Dilbagh Singh* (supra) at para 3
- (b) *Pritpal Singh v. State of Haryana*, (1994) 5 SCC 695
- (c) *Anand Kumar Pandey* (supra) at para 4.
- (d) *Hanuman Prasad* (supra)
- (e) *B. Ramanjini* (supra) at para 4.

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

- (a) *Krishan Yadav* (supra)
- (b) *Pramod Lahudas Meshram v. State of Maharashtra*, (1996) 10 SCC 749, wherein appointments had been made without following the selection procedure.
- (c) *O. Chakradhar* (supra) wherein appointments had been made without typewriting tests and other procedures of selection having not been followed.

53. It is now well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. [See *P.S. Sathappan (Dead) By LRs. v. Andhra Bank Ltd. and Ors.*, (2004) 11 SCC 672, *M.P. Gopalakrishnan Nair v. State of Kerala*, (2005) 11 SCC 45 and *Haryana State Coop. Land Development Bank v. Neelam*, (2005) 5 SCC 91.)”

25. Keeping in view the aforesaid legal propositions in mind, we have to examine as to whether the entire

selection process stood vitiated in the present case as held by the learned Tribunal or it can be discerned that the cases of the petitioners herein can be segregated and there are also not the beneficiaries of the alleged malpractices.

26. We have already indicated the analysis done by Prof. Ved Prakash, of the examination results and relevant portion thereof is reproduced above. 510 candidates had appeared in the examination. As per the report, in 26 cases, marks of the descriptive paper were found altered. As a result of this, 21 candidates were pushed to the scale of qualifying score and were called for the interview. Thus, these 21 candidates, but for the alteration in the marks in the descriptive paper, would not have qualified for the interview. However, it could not be disputed that the petitioners, who belong to the SC, ST and OBC category are not among those whose marks were altered.

27. The Committee also found that few candidates, who had secured more than 40 marks in the descriptive paper, their corresponding marks in other paper, i.e. paper of rules and regulation are much lower. On the other hand, those who were given qualifying score of 40 marks in the

descriptive paper, which made them eligible to appear in the interview, had got very high score in the rules and regulation paper. But for giving them the qualifying marks of 40 by rounding off, they would not have even qualified to be called for interview. However, after making them eligible for interview, they marched over those who had high marks in descriptive paper but low marks in rules and regulation paper. This is demonstrated in Table 3.01 and Table 3.2 of the report. From this, the Committee observed that the examiner firstly seems to have arbitrarily identified those cases where the candidates had secured high scores in rules and regulation paper but did not qualify in descriptive paper and subsequently altered their score as to enable them to qualify for the interview. The Committee also opined that since interviews had already been conducted, re-evaluation of answer scripts of the descriptive paper might render some of the eligible candidates into non-eligible zone and vice versa which will further mess up the entire issue. Learned counsel for the petitioners, however, pointed out that those cases demonstrated in Table 3.1 where marks in descriptive paper were rounded

off to 40 to make them eligible did not include any of the petitioners. On the other hand, example of those cases given in Table 302 where marks obtained by the candidates were more in descriptive paper but less in rules and regulation paper included one of the petitioners at serial No.2. Therefore, argued the learned counsel, instead of being the beneficiary, the petitioners, if at all, were the victims and could still qualify. Learned counsel for the petitioners also submitted that specific illegalities which were pointed out in the descriptive and objective paper did not include the cases of the petitioners.

28. In fact, counsel for the respondents, including counsel for the private respondents could not dispute that the petitioners were not the beneficiaries in the sense that their marks in the descriptive paper were not interpolated to make it 40 thereby making them eligible to appear in the interview and consequential selection. Notwithstanding the same, the reason given by the Tribunal, which was highlighted by the learned counsel for the NCERT as well as the private respondents, was that as a result of shortlisting process, 25 SC candidates and 23 OBC candidates had found their way to the

interview. Had there been no rounding off marks, others, who were coming within the zone of eligibility, would have marched over these petitioners and would have been interviewed. This had deprived such persons an opportunity of equal participation in the selection and because of this, the entire process of selection was vitiated as it was not possible to weed out the beneficiaries of illegalities. According to the Tribunal, the scope and zone of consideration were increased and ineligible persons had been inducted and found place in the list of appointed candidates.

29. We have have not been able to appreciate the aforesaid causal connection. Total number of candidates who were called for the interview were: 55 in general category, 23 in OBC, 25 in SC and 1 in ST category. Number of candidates with altered marks were 21. Since we are concerned with OBC, SC and ST candidates to which category the petitioners belong, as per Table 3 attached to the report of Prof. Ved Prakash Committee, 4 candidates out of 23 OBC candidates and 2 candidates out of 25 SC candidates were the beneficiaries of the alteration who had been pushed to the qualifying marks.

As far as the petitioners are concerned, without any such alterations they had scored more than 40 marks and would have been called for the interviews in any case. With the inclusion of 4 persons in OBC category and 2 in SC category, who became the beneficiary of the illegality, 6 other persons belonging to these categories are deprived of their right to be considered after calling them for interview as instead of these 6 persons whose marks are altered, some other persons would have been called for the interview. However, by no means it can be said that the petitioners would not have been called for the interview. The deduction on the part of the Tribunal that some other persons who were coming within the zone of eligibility would have marched over the petitioners herein and would have been interview are clearly untenable.

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 saggregated, the selection in respect of those persons is not to be cancelled.

31. *Insofar as the two Member Committee is concerned, it was constituted on the direction of the Tribunal with the objective of fixing the responsibility on those who were instrumental in the said illegalities. This Committee has examined the entire matter keeping in view the aforesaid term of reference and gave the names of the persons who were responsible for the mess.*

32. There is one more aspect which needs to be highlighted at this stage. These petitioners, who are admittedly not the beneficiaries of the illegalities, got the appointment in July 2002. Many of these petitioners left

their earlier jobs after their selection in the NCERT as Assistants. They have worked on these posts for more than five years now. Terminating their appointments at this stage when they are not the part of blemished selection process nor the beneficiaries thereof, would be highly unjust and improper. Things would have been different had they been parties to the irregularities and illegalities committed in the selection process or the beneficiaries thereof. The Court would have taken serious view in such circumstances and would not have been guided by equitable considerations. However, after finding that in so far as these petitioners are concerned, they are innocent; they have been selected on their own merit, uninfluenced by some of the illegalities committed to help certain other persons; they have given up their earlier jobs to join the NCERT and are working now for more than 5½ years, we are of the opinion that their case can be segregated as stand alone and untouched, uninfluenced by the irregularities in the selection process. Therefore, in so far as the cases of the petitioners herein are concerned, we are of the view that their selection should not be interfered with and while upholding the

remaining selection process as vitiated, we direct that the cases of the petitioners shall not be affected thereby and they will continue to hold the post of Assistants on which they are selected on their own merits. These petitions are allowed to the aforesaid extent. There shall be no orders as to costs.

(A.K. SIKRI)
JUDGE

December 20, 2007
HP.

(VIPIN SANGHI)
JUDGE