RAMDAS ATHAWALE

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 86 of 2004)

MARCH 29, 2010

[K.G. BALAKRISHNAN, CJI., S.H. KAPADIA, R.V. RAVEENDRAN, B. SUDERSHAN REDDY, P. SATHASIVAM, JJ.]

Constitution of India, 1950:

Articles 87, 118, 122 – President's special address at the commencement of session – Requirement of, when the House resumed after it was adjourned sine die – Held: Resumption of House for the purpose of continuing its business would not amount to commencement of new session – No special address by President required – Rules of Procedure and Conduct of Business in Lok Sabha – Rule 15.

Articles 122, 32 – Speaker's decision directing resumption of House which was adjourned sine die – Writ petition questioning the propriety of Speaker's decision – Maintainability of – Held: Courts are precluded from making inquiry into proceedings of Parliament on the ground of any irregularity of procedure – Question whether the resumed sitting was to be treated as the second part of the session was essentially a matter relating purely to the procedure of Parliament and cannot be tested and gone into in a proceeding under Article 32 – Judicial review – Scope of.

Article 122 – Speaker – Powers and duties – Held: Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions – He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate

A *and to maintain order – Under Article 122 (2), the decision of the Speaker in whom powers are vested to regulate the procedure and the Conduct of Business is final and binding on every Member of the House.*

B *Article 32 – Scope of – Held: Petition under Article 32 not entertainable unless it is shown that the petitioner had some fundamental right.*

Article 85 – Prorogation and adjournment – Distinction between.

C

The Fourteenth Session of the Thirteenth Lok Sabha commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. Thereafter on 20th January, 2004, the Secretary General of the Lok Sabha,

D **by way of a Notice informed all the Members of the Thirteenth Lok Sabha, duly stating that under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker has directed that the Lok Sabha, which was adjourned *sine die* on 23rd December, 2003**

E **would resume its sittings on 29th January, 2004.**

In a writ petition filed under Article 32 of the Constitution of India, a member of Lok Sabha challenged the constitutional validity of the proceedings in the Lok Sabha commencing from 29th January, 2004 on the

F **ground that the Session commenced on 29th January, 2004 was the first Session of the Lok Sabha in the year 2004, and there was no address by the President informing the Parliament, the cause of its summons as provided for and required under Article 87 (1) of the**

G **Constitution of India.**

Dismissing the writ petition, the Court

HELD: 1.1. The scheme of the Constitution, from the compendium of Articles 79, 83, 85 and 86 reveals that

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Union Parliament consists of the President and the Council of States and the House of the People unless dissolved earlier, the House of the People continues for five years from the date of its first meeting, and the expiration of five years operates as a dissolution of the House except that during proclamation of Emergency, the period of five years may be extended at a time not exceeding one year and not extending in any case beyond six months after such proclamation has ceased to operate. The President is under constitutional mandate to summon each House of the Parliament from time to time to meet at such time and place as he thinks fit. The President alone is vested with the power to summon the House from time to time and prorogue the House or either House; and to dissolve the House of the People. The President has a right to address either House or both the Houses together and for that purpose require the attendance of Members. He may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and the House to which message is sent is required to take the same into consideration. [Para 10] [1071-A-E]

1.2. A plain reading of Article 87 clearly suggests that (a) the President shall address at the commencement of the first session after each general election to the House of the People; and (b) at the commencement of the first session of each year. In the present case, the Winter session of the House of the People commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The resumption of its sittings on 29th January, 2004, by no stretch of imagination, could be characterized as commencement of a new session. The House merely resumed its sittings and continued the Session which actually commenced on 2nd December, 2003. As the House was adjourned *sine die* on 23rd

A December, 2003, the resumption of its sittings is nothing but reconvening of the same Session after its adjournment *sine die*. It is the second part of the same session. [Paras 12 and 14] [1071-H; 1072-A, C, D]

B 1.3. The words "first session of the year" employed in Article 87 (1) has no reference to resumption of the adjourned session. The session commences with the President's summoning the House to meet. It is Article 85 which deals with the summoning of Sessions of Parliament, prorogation and dissolution of the House of C People. The constitutional provision does not require summoning of every Session of Parliament which was adjourned for its own reasons after commencement of its Session pursuant to the summons of the President. It is only when a House is prorogued and a new Session D thereafter summoned under Article 85(2) of the Constitution, the special address by the President as provided for under Article 87(1) is required with reference to the new Session so as to inform the Parliament of the cause of its summons. No such special address is E needed, if a Sessions is adjourned *sine die* in the previous year and the sittings of the same Session is resumed in the next year. [Para 15] [1072-E-H]

1.4. Articles 85 and 87 were amended so as to do F away with the summoning of Parliament twice a year and the constitutional requirement of the President's special address at the commencement of each Session. The present constitutional position is that not more than six months are to elapse between the last Session and the G first day of the following Session. The House is now prorogued only once a year and the President addresses both Houses of Parliament only at the commencement of the first Session of each year. Article 87, as it originally stood, provided for the President's address in 'every Session of the year'. The first amendment in 1951 H

substituted the words "every Session" by "first Session of each year". By the first amendment, Articles 85 and 174 were also amended. [Paras 16 and 17] [1073-A-D]

Special Reference No. 1 of 2002 **(2002) 8 SCC 237, relied on.**

Kaul & Shakdher's Practice and Procedure of Parliament **Fifth Edition; *May's Parliamentary Practice*, referred to.**

1.5. An adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a Session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current. A Session commenced in terms of the order of the President summoning the House can come to an end only with the day on which the President prorogue the House or dissolves Lok Sabha. It is thus clear that whenever the House resumes after it is adjourned *sine die*, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29th January, 2004, does not amount to commencement of the first Session in the year 2004. [Paras 20, 22, 23] [1073-B, G; 1076-D]

2. Under Article 122 of the Constitution, the Courts are precluded from making inquiry into proceedings of Parliament. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in the Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition was to declare the proceedings in the Lok Sabha pursuant to the Notice dated 20th January, 2004 issued under the directions of the Speaker as unconstitutional. The petitioner essentially raised a dispute as to the regularity and legality of the proceedings in the House of the People and propriety of the Speaker's direction to

A resume sittings of the Lok Sabha which was adjourned *sine die* on 23rd December, 2003. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested B with the power to control and regulate the course of debate and to maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported C exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated 20th January, 2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned *sine* D *die* on 23rd December, 2003. Whether the resumed sittings on 29th January, 2004 was to be treated as the second part of the 14th session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings E cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India. [Paras 25, 26] [1079-D; G-H; 1080-A-F]

3. Article 118(1) provides that each House of F Parliament may make rules for regulating, subject to the provisions of the Constitution, its procedure and conduct of its business. The rules, in fact, are made and known as Rules of Procedure and Conduct of Business in Lok Sabha. Article 118(1) makes it perfectly clear that when G the House is to make any rules as prescribed by it, those rules are subject to the provisions of the Constitution which obviously include Fundamental Rights guaranteed by Part III of the Constitution. Article 122(2) confers immunity on the officers and members of Parliament in H whom powers are vested by or under the Constitution for

regulating procedure or conduct of the business or for maintaining order in Parliament from being subject to the jurisdiction of any Court in respect of the exercise by him of those powers. [Paras 27-29] [1080-G; 1081-C-H]

4. The Notice dated January 20, 2004 is self-explanatory and reveals that the House was adjourned *sine die* on 23rd December, 2003 by the Speaker. It is the Speaker's direction to resume its sittings from 29th January, 2004 onwards. The Notice clearly says that it was the second part of the fourteenth session and was likely to conclude on 5th February, 2004. The Speaker's decision adjourning the House *sine die* on 23rd December, 2003 and direction to resume its sittings relates to proceedings in Parliament and is of procedural in nature. The Business transacted and the validity of proceedings after the resumption of its sittings pursuant to the directions of the Speaker cannot be inquired into by the Courts. [Para 30] [1082-B-D]

5. Under Article 122 (2), the decision of the Speaker in whom powers are vested to regulate the procedure and the Conduct of Business is final and binding on every Member of the House. The validity of the Speaker's decision adjourning the House *sine die* on 23rd December, 2003 and latter direction to resume its sittings cannot be inquired into on the ground of any irregularity of procedure. The business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the directions of the Speaker cannot be inquired into by the Courts. No decision of the Speaker can be challenged by a member of the House complaining of mere irregularity in procedure in the conduct of the business. Such decisions are not subject to the jurisdiction of any Court and they are immune from challenge. [Para 31] [1082-E-G]

In re, Under Article 143, Constitution of India **(1965) 1**

A **SCR 413;** *Indira Nehru Gandhi v. Raj Narain & Anr.* **1975 (Supp.) SCC 1, explained.**

6. It is a right of each House of Parliament to be the sole judge of the lawfulness of its own proceedings. The B **Courts cannot go into the lawfulness of the proceedings of the Houses of Parliament. The Constitution aims at maintaining a fine balance between the Legislature, Executive and Judiciary. The object of the constitutional scheme is to ensure that each of the constitutional** C **organs function within their respective assigned sphere. Precisely, that is the constitutional philosophy inbuilt into Article 122 of the Constitution of India. [Para 31] [1082-H; 1083-A-B]**

M.S.M Sharma v. Dr. Shree Krishna Sinha **AIR 1960 SC** D **1186, referred to.**

7. One more aspect of the matter is that the petition has become infructuous, since the Lok Sabha was dissolved and thereafter two elections have been held. E **The issue raised in the petition was purely a hypothetical question. There is no existing *lis* between the parties. It is settled practice that this Court does not decide matters which are only of academic interest on the facts of a particular case. [Para 34] [1084-E-F]**

F *R.S. Nayak v. A.R. Antulay* **(1984) 2 SCC 183, referred to.**

8. It is equally well settled that Article 32 of the Constitution guarantees the right to a Constitutional G **remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that** H **the petitioner has some fundamental right. There is not**

even a whisper of any infringement of any fundamental right guaranteed by Part III of the Constitution in the writ petition. Whenever a person complains and claims that there is a violation of any provision of law or a Constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a Constitutional provision is an action in breach of fundamental right. The writ petition deserves dismissal only on this ground. [Paras 37 and 38] [1085-B-F]

Northern Corporation v. Union of India **(1990) 4 SCC 239, relied on.**

Case Law Reference:

(2002) 8 SCC 237	**relied on**	**Para 19**
(1965) 1 SCR 413	**explained**	**Para 29**
1975 (Supp.) SCC 1	**explained**	**Para 31**
AIR 1960 SC 1186	**referred to**	**Para 32**
(1984) 2 SCC 183	**referred to**	**Para 35**
(1990) 4 SCC 239	**relied on**	**Para 37**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 86 of 2004.

Under Article 32 of the Constitution of India

H.K. Puri for the Appellant.

G.E. Vahanvati, Indira Jaisingh, ASG, A. Mariaputham, Devdatt Kamat, T.A. Vimal Dubey, Chinmoy Pradip Sharma Anil Katiyar, P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

A **B. SUDERSHAN REDDY, J.** 1. This writ application under Article 32 of the Constitution of India has been filed by a Member of Lok Sabha, challenging the validity of the proceedings in the Lok Sakha commencing from 29th January, 2004 on the ground that the President has not addressed both
B Houses of Parliament as envisaged under Article 87 of the Constitution. The prayer in the writ petition is to issue appropriate Writ or direction or order declaring that the Session of the Lok Sabha called by the Notice dated January 20, 2004 is the first Session in the year 2004; and the proceedings of
C the Lok Sabha pursuant to the Notice dated 20th January, 2004 are unconstitutional, illegal, null and void.

2. The case set up by the petitioner is that the Session commenced on 29th January, 2004 was the first Session of the Lok Sabha in the year 2004, and there was no address by the
D President informing the Parliament, the cause of its summons as provided for and required under Article 87 (1) of the Constitution of India. The contention of the petitioner was that the "first Session" means, the Session, which is held first in point of time in a given year. According to him, the Session, which
E commenced on 29th January, 2004 was the first Session of the House of the year 2004. The sittings thereafter continued up to 5th February, 2004.

3. There is no dispute before us that the Fourteenth
F Session of the Thirteenth Lok Sabha commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. Thereafter on 20th January, 2004, the Secretary General of the Lok Sabha, by way of a Notice informed all the Members of the Thirteenth Lok Sabha, duly
G stating that under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker has directed that the Lok Sabha, which was adjourned *sine die* on 23rd December, 2003 will resume its sittings on 29th January, 2004.

4. Learned counsel for the petitioner submitted that in
H terms of mandatory requirement as provided for in Article 87

(1) of the Constitution of India, the President has to address both Houses of Parliament at the commencement of the Session every year and inform the Parliament of the causes of its summons. It was submitted that the commencement of the first Session of each year has to be with reference to the first Session of each year and year shall mean a year reckoned according to British calendar. The contention was that the sittings of the Lok Sabha from 29th January, 2004 were unconstitutional or it could not have been assembled at all in the absence of special address of both the Houses of Parliament by the President. The House of People could have assembled only after the special address by the President.

5. The learned Attorney General submitted that in the instant case the Winter Session of Parliament had commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The House resumed sitting of that adjourned Session in pursuance of the Notice of the Secretary General dated 20th January, 2004 under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha. It was submitted that the sitting commenced on 29th January, 2004 was not the commencement of a new Session, but was a continuation of Winter Session, which was adjourned on 23rd December, 2003. The learned Attorney General further submitted that the word "first Session" of the year in Article 87 cannot refer to the resumption of the adjourned Session. It must refer to a new Session. It was submitted that the distinction in procedure between the resumption of an adjourned Session and summoning of a new Session may have to be borne in mind for the purpose of interpretation of Article 87 (1) of the Constitution of India. The submission was that, for the resumption of an adjourned Session, the Speaker, under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, directs issuance of a notice informing the Members of the next sitting of the Session. But if the House is prorogued, it is only the President who can summon the next Session of the Parliament. It was submitted that in the present case, Article

A 87 (1) has no application, as the Winter Session was only resumed on 29th January, 2004 and no new Session was summoned.

6. In dealing with these contentions, we shall follow the sequence of events and examine the constitutionality of each B happening that would clearly demonstrate that the matter lies in a narrow compass than what has been made to appear.

7. In the United Kingdom the Queen and two Houses of Parliament constitutes the Legislature so that the Queen is an C integral part of the Legislature.

8. In India the same model has been adopted. Article 79 of the Constitution provides that there shall be a Parliament for the Union, which consists of the President and the two Houses D to be known respectively as the Council of the State and the House of the People. Article 83 (2) provides that the House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate E as a dissolution of the House, except during a proclamation of Emergency, the period of five years may be extended for a period not extending one year at a time, and not extending in any case beyond six months after such proclamation cease to operate. Under Article 85 (1), the President has to summon each House of the Legislature at such time and place as he F thinks fit, so that six months do not intervene between its last sitting in one Session and its first sitting in the next. Article 85 (2) provides as follows:

"The President may from time to time—

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(a) prorogue the Houses or either House; and

(b) dissolve the House of the People."

9. Article 86 speaks about Right of the President to H address and send messages to Houses.

10. The scheme of the Constitution, as is evident from the compendium of Articles referred to hereinabove, reveals that Union Parliament consists of the President and the Council of States and the House of the People unless dissolved earlier, the House of the People continues for five years from the date of its first meeting, and the expiration of five years operates as a dissolution of the House except that during proclamation of Emergency, the period of five years may be extended at a time not exceeding one year and not extending in any case beyond six months after such proclamation has ceased to operate. The President is under constitutional mandate to summon each House of the Parliament from time to time to meet at such time and place as he thinks fit. The President alone is vested with the power to summon the House from time to time and prorogue the House or either House; and to dissolve the House of the People. The President has a right to address either House or both the Houses together and for that purpose require the attendance of Members. He may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and the House to which message is sent is required to take the same into consideration.

11. Article 87 is an important Article for our present purpose and it reads as follows:

> *"87. Special address by the President:-* (1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.
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> (2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address."

12. A plain reading of Article 87 clearly suggests that (a)

A the President shall address at the commencement of the first session after each general election to the House of the People; and (b) at the commencement of the first session of each year.

13. The question is whether in this case was there any
B failure in complying with the requirement as provided for under Article 87 (1) of the Constitution?

14. In the present case, the Winter session of the House of the People commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The resumption
C of its sittings on 29th January, 2004, by no stretch of imagination, could be characterized as commencement of a new session. The House merely resumed its sittings and continued the Session which actually commenced on 2nd December, 2003. As it is evident from the record, the House
D was adjourned *sine die* on 23rd December, 2003, the resumption of its sittings is nothing but reconvening of the same Session after its adjournment *sine die*. It is the second part of the same session.

E 15. The words "first session of the year" employed in Article 87 (1) has no reference to resumption of the adjourned session. The session commences with the President's summoning the House to meet. It is Article 85 which deals with the summoning of Sessions of Parliament, prorogation and dissolution of the House of People. The constitutional provision does not require
F summoning of every Session of Parliament which was adjourned for its own reasons after commencement of its Session pursuant to the summons of the President. It is only when a House is prorogued and a new Session thereafter summoned under Article 85 (2) of the Constitution, the special
G address by the President as provided for under Article 87 (1) is required with reference to the new Session so as to inform the Parliament of the cause of its summons. No such special address is needed, if a Sessions is adjourned *sine die* in the previous year and the sittings of the same Session is resumed
H in the next year.

16. Articles 85 and 87 were amended so as to do away with the summoning of Parliament twice a year and the constitutional requirement of the President's special address at the commencement of each Session. The present constitutional position is that not more than six months are to elapse between the last Session and the first day of the following Session. The House is now prorogued only once a year and the President addresses both Houses of Parliament only at the commencement of the first Session of each year.

17. Article 87, as it originally stood, provided for the President's address in 'every Session of the year'. The first amendment in 1951 substituted the words "every Session" by "first Session of each year". By the first amendment, Articles 85 and 174 were also amended. While intervening in the debate Dr. B.R. Ambedkar, with reference to amendment to Article 85, stated:

> "...due to the word summon, the result is that although Parliament may sit for the whole year adjourning from time to time, it is still capable of being said that Parliament has been summoned only once and not twice. *There must be prorogation in order that there may be a new session.* It is felt that this difficulty should be removed and consequently the first part of it has been deleted. The provision that whenever there is a prorogation of Parliament, the new session shall be called within six months is retained."
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> (emphasis supplied)

18. Kaul & Shakdher's Practice and Procedure of Parliament (Fifth Edition, at page 180) gives the background to the aforesaid amendment and observed:

> "Before article 87(1) was amended in its present form by the Constitution (First Amendment Act, 1951, the article required the President to address both the Houses

A assembled together at the commencement of each session. Accordingly, the President addressed each of the three sessions held in 1950 of the Provisional Parliament.

During the Third Session, a question arose whether the B next session might commence with the President's Address or would the session be merely adjourned to meet again on 5 February, 1951, which would obviate the necessity of the President's Address. Speaker Mavalankar, in this connection, suggested that instead of the President addressing each session, it might be C provided that he would give his Address at the commencement of the first session (First Amendment) Bill, 1951, as reported by the Select Committee, observed: "The real difficulty of course is that this (Address) involves a certain preparation outside this House which is often D troublesome. Members are aware that when a coach and six horses come, all kinds of things have to be done for that purpose. Anyhow, that trouble does not fall on the House or members thereof, but on the administration of Delhi"."

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Distinction between Prorogation and Adjournment:

19. In the matter of *Special Reference No. 1 of 2002*[1], a Constitution Bench of this Court while interpreting Article 85 (2) of the Constitution observed:

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"When the House is prorogued, all the pending proceedings of the House are not quashed and pending Bills do not lapse. The prorogation of the House may take place at any time either after the adjournment of the House G or even while the House is sitting. An adjournment of the House contemplates *postponement of the sitting or proceedings of either House to reassemble on another specified date.* During currency of a session the House may be adjourned for a day or more than a day.

H 1. (2002) 8 SCC 237.

2006 was not gazetted before the consequential notification dated 7th June, 2006 was issued. He has referred to the definitions of "notification", "official Gazette" and "Gazette" in the Criminal Procedure Code. According to the definition given in the Code, the word "notification" means a notification published in the Official Gazette. "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State.

101. He submitted that the copy of the notification was not made available to the appellant and he was driven to file a writ petition before this court and only because of the direction of this court, a copy of the notification was made available to him.

102. Public trial is an important part of the judicial system and this court in *Kehar Singh's* case has ruled:

> "In open dispensation of justice, the people may see that the State is not misusing the State machinery like the Police, the Prosecutors and other public servants. The people may see that the accused is fairly dealt with and not unjustly condemned. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and institutions of the State may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze."

103. The first question that one asks, before setting aside any order, is the nature of the action, judicial, legislative or administrative. This is because the grounds under which each type of action may be set aside are different. It was held in *Kehar Singh's* case that the order of the High Court notifying the trial is not a judicial order but an administrative order. The court held as under:-

A "The order of the High Court notifying the trial of a particular case in a place other than the Court is not a judicial order but an administrative order."

104. Since this is an administrative function, therefore, the test for this court should be whether the decision of the High Court stands up to the test of judicial review of administrative decisions. The first question, therefore, is whether the appellant had a statutory right to a hearing. If this is answered in the positive, then there is no need to go to further issues, as this would mean that the State has violated a statutory right to hearing. It is clear from the wording of Section 9 of the Code that there is no need for the High Court to give a hearing while deciding the venue of the trial. It is only if the Sessions Court is moving the place of trial that the parties have a right to a hearing. It must be added that one of the exceptions to the rule of *audi alteram partem* is the denial of hearing by implication. D. D. Basu in his celebrated book mentions:

"(a) Where the statute classifies different situations and while, in some cases, it makes it obligatory to give a hearing to the party to be affected by the proposed order, in some other specified circumstances, such as an emergency or the avoidance of public injury, no such hearing is required because of the nature of the exceptional situation." [Basu, Durga Das, Administrataive Law, Sixth Edition, 2004 at pg. 288]

105. It is therefore, clear that there is no statutory right for the appellant to be heard. However, common law and the principles laid down in the Constitution lay down that even in administrative action there must be minimum standards that are to be maintained. In *State Bank of Patiala & Others v. S.K. Sharma* (1996) 3 SCC 364 this court ruled:

"The objects of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing is to ensure that justice is done, that

there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing." A

106. In *Wiseman & Another v. Borneman & Others* (1971) A.C. 297 Lord Reid held: B

"For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation." C

107. Therefore, this court must look into the issue whether the right to a fair hearing was denied to the appellant or not even if there is no statutory provision for it. D

108. The principles of natural justice are essential to the framework of our laws and a protection against arbitrary actions. There is every duty of the courts to judicially review administrative actions. However, this is usually not to be applied blindly. *In Regina v. Gaming Board for Great Britain* (1970) 2 Q.B. 417, the court emphasized: E

"it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter." F

109. However, there are situations where the action of the State is prima facie void and therefore has to be set aside. If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review. This Court in *Naresh Shridhar Mirajkar's* case (supra) held that: G

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A "If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exception whatever, cases may arise where by following the principle, justice itself may be defeated."

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110. In the present case, it must be noted that a large number of supporters of the appellant may create unrest in front of the court room and much larger security would be required to protect the witnesses, the officers of the Court and the C appellant. Therefore, it is clear from the letter of the Superintendent of Police of Siwan that it is not possible to hold the trials of the appellant in the open court. Holding of the trials of the appellant in open court may affect the trials of other civil and criminal cases that are going on in the same court building. Therefore, there is no violation of the principles of natural justice D in shifting the trials of the cases of the appellant from a regular court to a special court.

111. When there is no prima facie violation of the principles of natural justice then one must test whether there is need for E a judicial review of the orders of shifting the trials. The Privy Council in *Alfred Thangarajah Durayappah of Chundikuly v. W.J. Fernando & Others* (1967) 2 AC 337 laid down that it was neither possible nor desirable to classify exhaustively the cases in which a hearing is required but three factors must be borne F in mind—

(1) The nature of the property or office held or status enjoyed by the complainant.

(2) The circumstances in which the other deciding party G is entitled to intervene.

(3) When the latter's right to intervene is proved, the sanctions he can impose on the complainant.

112. The subject matter in the present case is the open H trials for the appellant. There is a claim that it is being vitiated

by holding the trial in the jail. Here again there is doubt as to whether the first requirement has been vitiated by the decision of the High Court. The appellant has merely stated that the trial of his case has been transferred from the Siwan Court to the Siwan Jail. This in itself does not prove that the trial has been closed to the public. In *Kehar Singh's* case, this court observed that for reasons of security, the public access to trial can be regulated. The relevant observations are reproduced as under:-

> "10. For security reasons, the public access to trial was regulated. Those who desired to witness the trial were required to intimate the court in advance. The trial Judge used to accord permission to such persons subject to usual security checks"
>
> 113. This was considered a valid trial in open court.

114. Even in the United States in *Samuel H. Sheppard v. E.L. Maxwell* 384 U.S. 333 (1966), the Supreme Court ruled that the right to a public trial is not absolute. Sometimes excess publicity can be harmful to the case and therefore public access may be restricted. In *Press-Enterprise Co. v. Superior Court* 478 U.S. 1 (1986), the court held that trials can be closed on account of there being:

> "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."

115. While the Oregon Court of Appeals overruled the trial held in prison in *State of Oregon v. James Donald Jackson* 178 Or App 233, 36 P3d 500 (2001) on the specific ground that the public did not have access to watch the trial; there is no ruling that all trials inside jails are void. In the case of *Stephen Gary Howard v Commonwealth of Virginia* 6 Va. App. 132 (1988) the appellant claimed that the trial inside prison was inherently prejudicial to his case. The Court of Appeals of Virginia held that there is no presumption of

A prejudice if a trial is held in prison. The court noted:

> "We find that the trial location did not erode Howard's right to a presumption of innocence."

116. In *Adolph Dammerau v. Commonwealth of Virginia* B 3 Va. App. 285 (1986), the Court of Appeal ruled:

> "Rather, the surroundings and circumstances of each situation must be examined to determine if the public was inhibited from attending the trial so that "freedom of C access" was effectively denied."

117. This clearly shows that the approach of the court that there is no presumption that a trial in prison is not an open trial.

118. In *The People v. Robert England the Court* 83 Cal. D App. 4th 772 (2000) of Appeals of California held that reasonable restrictions, like security checks should be allowed. The court found:

> "In this case, the court did not close the trial to the public. E Defendant argues only that it was more difficult for the public to attend because some people would be dissuaded from attending a proceeding held on prison grounds and some would resent having to identify themselves to prison officials to gain access to the F grounds. Neither concern impacts defendant's right to a public trial.
>
> As noted previously, because the courtroom was located outside the actual prison wires, there was little possibility that the public might come into contact with inmates or G otherwise be exposed to prison activities. That some people might not want to go to a courtroom located on prison grounds is irrelevant to determining whether a trial was public. *Other individuals might not want to go downtown to an urban courtroom, while others might not* H *want to drive long distances in rural areas to attend a*

courtroom located in another town. These individual predilections do not make what is otherwise a public trial any less public. A

Nor does the fact that individuals have to identify themselves before entering prison grounds unlawfully curtail defendant's right to a public trial. Far more stringent security procedures have been permitted in other cases." B

119. Therefore, to hold that the appellant's right to a public trial has been denied the appellant has to prove more than mere shifting of the location of the trial. C

120. Lord Wilberforce in *Malloch v. Aberdeen Corporation* (1971) 1 W.L.R. 1578 laid down a test for courts before it interfered in the decisions of administrative authorities on the ground of violation of *audi alteram partem*. He stated: D

"The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make. *A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain*" E F

121. In the present case, it has been shown by the respondents that no one had been denied from attending or watching the trial. The appellant is being represented by 38 lawyers. Apart from his lawyers, the press and those who want to attend the trial or case had free access to remain present during the court proceedings. G

122. In *K.L. Tripathi v. State Bank of India & Others* (1984) 1 SCC 43 this Court held: H

A "When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly...."

B In the same case this Court stated:

"it is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice..."

C 123. In *George v Secretary of the State for the Environment* (1979) 77 L.G.R. 689 (1979), the court held that there must be some real prejudice to the complainant:

D "there is no such thing as a merely *technical infringement of natural justice*."

The court noted:

"The question is whether, as a result of any failure in
E procedure or the like, there was a breach of natural justice.

On this approach, the position under the first limb is almost indistinguishable from that under the second limb. One should not find a breach of natural justice unless there has been substantial prejudice to the applicant as a result of
F the mistake or error that has been made."

124. In *R. Balakrishna Pillai v. State of Kerala* (2000) 7 SCC 129, this Court observed regarding adherence to the Principles of Natural Justice. Relevant para is reproduced as
G under:

"It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in
H

a given case is not sufficient." A

125. In *Jankinath Sarangi v. State of Orissa* (1969) 3 SCC 392, this court pointed out that there is no carte blanche rule of setting aside orders. Hidayatullah CJ, ruled:

> "There is no doubt that if the principles of natural Justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to *what actual prejudice* has been caused to a person by the supposed denial to him of a particular right." B C

126. In *Sahai Singh* (supra), the court noted that if the Executive Authorities were of the opinion that it would be unsafe to hold the trial elsewhere it could be held in jail.

127. In the present case, the letters exchanged between the police authorities and the request made to High Court clearly show that there was serious danger in producing the appellant in open court. The police authorities had shown that the large crowds were making a fair trial impossible and creating delays in deciding the cases. The relevant part of the letter dated 8.5.2006 written by the Superintendent of Police, Siwan reads: D E

> "With reference to the above, I have to respectfully inform you that more than forty cases are pending against Hon'ble Member of Parliament Mohd. Shahabuddin. Directions have been received from Hon'ble Patna High Court to dispose of cases as soon as possible. There is serious danger to public peace during the presence of Hon'ble Member of Parliament Mohd. Shahabuddin, in the court premises. His supporters and other co-criminals can attack the witnesses. Even the possibility of threat and attack on the public prosecutor/district prosecuting officer cannot be ruled out. Besides this, since he is wanted in many cases, therefore, other criminal groups can also attack him. Since F G H

A he is a sitting M.P. and looking to the number of his supporters, it will impair the working of other courts in Civil Court Siwan. His supporters can create disturbance during hearing after seeing that his defence gets weak and there is possibility that his supporters may disturb public peace B in the court premises and nearby areas and can commit murder and other serious law and order problems....."

128. In *Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia & Others* (2005) 7 SCC 764, there C was clear record that the employee had assaulted a doctor and it was not possible to run a hospital safely and as an emergency the employee was dismissed. The court held that the dismissal was valid in view of maintaining discipline of the hospital.

129. I have heard the learned counsel for the parties at D length and carefully examined the provisions of law and the relevant Indian, English and American judgments. The judgments and other literature available on record favour public trial or open trial as a rule.

E 130. Cooley, J. in his well known book *Cooley's Constitutional Law, Vol I, 8th edn., at page 647* observed as under:

"It is also requisite that the trial be *public*. By this is not meant that every person who sees fit shall in all cases F be permitted to attend criminal trials; because there are may cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial on the part of portions of the community would be of the worst character, and where a G regard for public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a public trial is for the benefit of the accused; that the public may H see he is fairly dealt with and not unjustly condemned, and

that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility into the importance of their functions; and the requirement is fairly observed if, without partiality of favouritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether."

131. Every criminal act is an offence against the society. The crime is a wrong done more to the society than to an individual. It involves a serious invasion of rights and liberties of some other person or persons. The people are, therefore, entitled to know whether the justice delivery system is adequate or inadequate. Whether it responds appropriately to the situation or it presents a pathetic picture. This is one aspect. The other aspect is still more fundamental. When the State representing the society seeks to prosecute a person, the State must do it openly. As Lord Shaw said with most outspoken words [*Scott & Another v. Scott:* 1913 A.C. 417]:

"It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice." "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial." "The security of securities is publicity." But amongst historians the grave and enlightened verdict of Hal-lam, in which he ranks the publicity of judicial proceedings even higher than the rights of Parliament as a guarantee of public security, is not likely to be forgotten: "Civil liberty in this kingdom has two direct guarantees; the

A open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of
B any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise...."

132. In dispensation of justice, the people should be satisfied that the State is not misusing the State machinery like
C the Police, the Prosecutors and other Public Servants. The people may see that the accused is fairly dealt with and not unjustly condemned. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and
D institutions of the State may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze.
E

133. Beth Hornbuckle Fleming in his article "*First Amendment Right of Access to Pretrial Proceeding in Criminal Cases*" (Emory Law Journal, V.32 (1983) P.619) neatly recounts the benefits identified by the Supreme Court of
F the United States in some of the leading decisions. He categorizes the benefits as the "fairness" and "testimonial improvement" effects on the trial itself, and the "educative" and "sunshine" effects beyond the trial. He then proceeds to state;

"Public access to a criminal trial helps to ensure the
G fairness of the proceeding. The presence of public and press encourages all participants to perform their duties conscientiously and discourages misconduct and abuse of power by judges, prosecutors and other participants. Decisions based on partiality and bias are discouraged,
H thus protecting the integrity of the trial process. Public

3. The final decision was taken by Government of India for relaxing the minimum qualifying marks for the departmental candidates as a one time measure in order to facilitate the departmental candidates to get promotion to the posts of JAO. Deputationists, on the other hand, were provisionally allowed to sit in the examination subject to the final decision of the competent authority whether to absorb them or not. These conditions were made known to the deputationists in the policy decision dated 30.9.2000. The categorization of deputationists and the departmental candidates into the two categories was rightly upheld by the High Court. The law is well settled for many years that members of one homogenous group have to be treated equally. At the same time, Articles 14 and 16 do not mandate that un-equals are to be treated as equals. In this case, the classification cannot be said to be either irrational or arbitrary. It had a clear nexus with the objects sought to be achieved, i.e., to fill in as many vacant posts from the departmental candidates working on the lower ranks provided they reached bare minimum qualifying standards in the JAO, Part-II Examination. So far as the deputationists were concerned, the respondents were entitled to insist on recruiting the best from among the deputationists. Hence, the higher criteria for deputationists cannot be said to be arbitrary or discriminatory. Such classification is permissible under Articles 14 and 16 of the Constitution of India. [Para 20] [1104-D-H; 1105-A-B]

S.G. Jaisinghani v. Union of India **AIR 1967 SC 1427, relied on.**

Case Law Reference:

AIR 1967 SC 1427	**relied on**	**Para 20**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4345-4346 of 2007.

From the Judgment & Order dated 3.5.2005 of the High

A Court of Judicature for Rajasthan at Jodhpur, in D.B. Civil writ Petition Nos. 5193 and 5638 of 2004.

WITH

C.A. No. 4349-4350, 4351 of 2007.

B

Sushil Kumar Jain, Puneet Jain, Eshita Baruah, Pratibha Jain for the Appellants.

Amita Arora, Sumit Kaul, Meera Bhatia, Rishi Kesh for C Respondents.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. These appeals have been filed against the judgment of the High Court of Judicature D for Rajasthan at Jodhpur rendered in DB Civil Writ Petition No.5193/04 and DB Civil Writ Petition No.5638/04 dated 3.5.2005. By the aforesaid common judgment the High Court had held that the instructions dated 23.07.2002 had not superseded the qualifications laid down by Central Government E in its letter dated 24.6.2002. By virtue of the aforesaid decision of the High Court the appellants have lost the opportunity for being absorbed in the service of Bharat Sanchar Nigam Limited (BSNL). Civil Appeal No.4351/2007 has been filed against the order of Central Administrative Tribunal (CAT) dated F 17.11.2005 in O.A. No.116/2005 whereby the CAT has dismissed the O.A. following the decision of the Rajasthan High Court which is the subject matter of the two above noted appeals. We propose to dispose of all the aforesaid appeals by this common judgment.

G 2. The appellants had challenged the declaration of results of deputationists who had appeared in the Examination for Junior Accounts Officer (JAO), Part-II dated 29.08.2002 in the Central Administrative Tribunal (CAT) Jodhpur Bench, Jodhpur. It was claimed by the appellants that their names had been H wrongly omitted from the list of successful candidates in the

result dated 29.08.2002 as they had qualified the examination on the basis of the criteria laid down in the letter dated 23.07.2002. By the aforesaid letter BSNL had declared the result of candidates who had qualified in JAO, Part-II Examination held in December 2000. In that letter, the qualifying standards and the grace marks required to be obtained by the successful candidates were as follows:

"General candidates:	(1) 33% in each subject and 35% in aggregate.
	(2) 6 grace marks in any one subject.
SC/ST candidates:	(1) 25% in each subject and 27% in aggregate.
	(2) 6 grace marks in any one subject."

3. The appellants were permanent employees of the Postal Department. They had already qualified the Part-I and Part-II Examination of Junior Accounts Officer (JAO) in the Postal Department. Since the Department of Telecommunications (DoT) was having shortage of qualified JAO, the usual practice was to fill the vacant posts by taking JAOs on deputation from other departments in Union of India. Large number of employees from the postal department used to be taken on deputation in DoT batch-wise depending on the particular need of the borrowing department, i.e., DoT. It seems a policy decision was taken to absorb the employees of the Department of Posts who were qualified for the posts of JAOs and have passed both Part-I and Part-II examinations. The Department of Telecommunications (DoT) also wanted to appoint/promote its own employees who were working on the lower ranks of Clerks, Accountants, and Telephone Operators provided they were prepared to pass Part-I and Part-II Examinations for the post of JAO. Keeping in view the aforesaid

A objectives, DoT framed a scheme dated 30.9.2000 which *inter alia* provided as under:

> "Due to acute shortage in the grade of Junior Accounts Officers in Department of Telecommunications, this Department had taken certain officials from other Departments, including the Department of Posts, on deputation to work as Junior Accounts Officers and posted them to various Telecom Circles/Units. In order to have the services of these officials on long term basis, in view of large number of vacancies existing in the Department of Telecom in the grade of JAO as on date, it has now been decided, with the approval of competent authority, to absorb these deputationists as Junior Accounts Officers in DoT/DTS/DTO, as one time measure, after conducting an examination. The examination will be conducted on certain terms and conditions set out separately in respect of those officials who will be working on deputation in DOT/ proposed BSNL as on 18.10.2000 and for all those who have earlier worked in DoT on deputation basis but have since been repatriated to their parent cadre. Any official holding any post higher than JAO in his parent Department as on 30.9.2000 will not be eligible to appear in the said examination.
>
> 2. The said examination will be conducted simultaneously with JAO Telecom Part-II examination and will be only for Paper-VII and Paper-VIII for these deputationists, as contained in 'syllabus for JAO, Telecom Part-II Examination. The details of eligibility conditions and also terms and conditions (ANNEXURE I) for regulating their pay and seniority etc., for the said examination, alongwith proforma of declaration undertaking (ANNEXURE-II) required to be given by all the applicants at the time of applying for the examination are enclosed herewith. The application form is also enclosed. Photo copy of the same can be used by the officials for submitting the application."

4. The policy further stated that all the present deputationists who were willing to be absorbed in DoT/DTS/DTO as JAOs are requested to go through the terms and conditions and submit their applications in the prescribed proforma latest by 27.10.2000. Under the aforesaid policy, deputationists who had already been repatriated to their parent departments would also be eligible. They were also to submit their applications by the same day. It was also made clear that the appearance in the examination is purely provisional and subject to approval of absorption by the Department of Personnel and Training. The DoT also shall have the right to cancel the examination or withhold the results. This policy was accompanied by the detailed terms and conditions subject to which the deputationists were to take the Examination of JAO Part-II for Paper-VII and Paper-VIII. All the deputationists were required to appear in the examination in T.R. paper. The relevant provision of the annexure setting out the terms and conditions for absorption of personnel taken on deputation is as under:

"(B) Examination in T.R. Paper:

(1) The DoT/DTS/DTO will have to appear in Part-VII and VIII of JAO (Telecom) Part-II syllabus, which, inter-alia, consists of theory and practical portion relating to Telecom Revenue Accounts. These papers will be conducted simultaneously with other papers of JAO Part-II exam which will be held for those DOT officials who have already qualified DOT JAO Part-I examination. The examination schedule will be announced by DE Branch of DOT. It is, however, expected that the said exam will be conducted during 2nd fortnight of December 2000 subject to convenience of DE Branch.

(2) The syllabus for TR paper set for deputationists will be same as that for JAO (Part-II) examinees of Department of Telecommunications."

5. It was further provided that even upon qualification in

A both the examinations the absorption will be the sole discretion of DoT both in terms of time and number of persons. It was further provided that the deputationists who qualify in the Part-II Examination will be repatriated to their parent department before their absorption. It was further made clear that the DoT
B is on the verge of corporatisation and that the service conditions as well as the pay attached to the posts of JAOs and above are likely to undergo changes.

6. Knowing the aforesaid conditions, the appellants appeared in the examination in the two papers on 18.10.2000.
C It appears that on the very same date the examination was also held for the departmental candidates to be appointed on the posts of JAOs.

7. The result of the JAO, Part-II Examination held in
D December 2000 was declared through Letter dated 23.7.2002. It was stated that the candidates mentioned in Annexure-I had qualified the JAO, Part-II Examination. It further mentioned the approved qualifying standards. General candidates were required to secure 33% in each subject and 35% in aggregate,
E 6 grace marks were provided in any one subject. For Scheduled Caste/Scheduled Tribe candidate an even lower standard was prescribed. Significantly, the letter also mentioned that the names of the candidates are not arranged in order of merit. Clause 6 of the letter stated that the result in the case of candidates on deputation from other departments, who were
F allowed to appear in this examination, will be declared separately.

8. Thereafter, the results of deputationist candidates were declared on 29.08.2002. The appellants who would have been
G declared successful under the criteria contained in the Letter dated 23.07.2002 were not included in the list of successful candidates. Hence, the appellants had moved the CAT as noticed above. The CAT allowed the application with the following observations:

H "We have anxiously considered the submissions of

both the parties. In nut-shell, the dispute is whether or not the relaxation letter dated 23.7.2002 (Annexure A-5) is applicable to the deputationists, or it is meant only for non-deputationists i.e. officials of the DoT etc. As per the respondents, the letter dated 24.6.2002 (Annexure R/1) is applicable to the deputationists and since the applicant could not obtain marks at 45% in aggregate (i.e. a total of 90% marks in both the papers VII and VIII put together) he was not included in the impugned result. We observe while going through the various communications/letters/letters issued by the competent authority from time to time that the basic bible for absorption of the deputationists in DoT is letter dated 30.9.2000 (Annexure A/3). We find that nowhere it has been mentioned that for the purpose of eligibility for absorption in DoT, the deputationists are required to clear JAO part-I examination. We also find that the relaxation given in the letter dated 23.7.2002 (Annexure A/5) does not prohibit the deputationists to avail the above relaxations as is available to the officials of the DoT etc. We also observe that the communication dated 24.6.2002 (Annexure R/1) had been issued by the DoT wherein the minimum marks obtained in paper VII and VIII of JAO part II examination should be 45% in aggregate and 40% in each paper. This minimum prescribed percentage of marks were relaxed by issuing of another communication/ Letter dated 23.7.2002 (Annexure A/5) which is also applicable in the case of deputationists. We also anxiously noticed that the deputationists were required to pass only in JAO Part-II examination in paper VII and VIII only. As per the letter dated 30.9.2000 (Annexure A/3) wherein the terms and conditions have been laid down in the main body of the letter as well as in Annexure I to IV thereof, stand satisfied and fulfilled. Since the applicant had already cleared the JAO Part-II examination before deputation in DoT therefore only requirement for both the deputationists in DoT for absorption was to pass in paper VII and VIII only."

A 9. With these observations, BSNL was directed to include the names of the appellants in the list of successful candidates as per their merit positions and consider their candidature for absorption on the posts of JAOs.

B 10. The aforesaid decision of the CAT was challenged before the High Court of Judicature at Jodhpur by Union of India/ BSNL in two writ petitions. Considering the factual situation as narrated above, the Division Bench considered the two letters dated 23.07.2002 and 24.06.2002 and held that the CAT had not construed the same in the proper perspective. The Division C Bench concluded that deputationists who were to be absorbed on the posts of JAOs and the departmental employees seeking appointment by way of promotion on the posts of JAOs who were required to take the JAO Examination, constituted two separate and distinct classes. While the employees of DoT D have been offered an opportunity for being qualified to become JAO in the regular line of promotion, deputationists who had not passed one of the requisite essential papers of JAO, Part-II Examination were permitted to make up the deficiency by passing the necessary paper in the examination held by the E DoT. The classification was, therefore, on a rational basis. It had a nexus with the object sought to be achieved. Therefore the appellants could not have complained of any violation of their rights under Articles 14 and 16 of the Constitution of India. The Division Bench concluded that the letter dated 23.07.2002 F was not applicable to the deputationists. They were governed by the conditions laid down in the letter dated 24.06.2002 which had been placed before the CAT as Annexure R1. It has been held that the appellants failed to place on record any material to show that the aforesaid letter dated 24.06.2002 G which was applicable in the case of deputationists, had been superseded by the letter dated 23.07.2002. Consequently, the writ petitions filed by the Union of India/BSNL were allowed and the order passed by the CAT was set aside. The applications filed by the appellants were dismissed. Hence the appellants who were the applicants before the CAT have challenged the H

aforesaid judgment of the Rajasthan High Court in these appeals. A

11. We have heard the learned counsel for the parties. It is vehemently argued by Mr. Sushil Kumar Jain, appearing for the appellants, that the letter dated 23.07.2002 is fully applicable in the case of the deputationists who had appeared in the T.R. paper of the JAO Part-II Examination. The letter dated 24.06.2002 stood modified by the letter dated 23.07.2002. According to the learned counsel, the Division Bench has misread the relevant provisions in various documents. He submitted that the appellants had appeared in the examination pursuant to the scheme dated 30.09.2000. In this letter, it was clearly provided that the syllabus for T.R. paper set for deputationists will be same as that for JAO Part-II examinees of the DoT. A combined examination was held in which candidates of DoT as also deputationists appeared. The conditions of eligibility were prescribed for all the candidates. He emphasised on the use of the expression "this examination" in the letter dated 23.07.2002. According to the learned counsel the eligibility criteria had been lowered for all the candidates. Learned counsel submitted that in view of Clause 6, BSNL was entitled to declare the results of the deputationists separately. It was so declared on 29.08.2002. This declaration of the result on 29.08.2002 was a mere continuation of the declaration of result as contained in the letter dated 23.07.2002. This mere declaration of the result on 29.08.2002 would not permit BSNL to change the qualifying marks for deputationists from 33% in individual papers and 35% in aggregate to 40% in each paper and 45% in aggregate. Had it been the intention of the authorities to provide separate qualifying marks for deputationists, it would have been mentioned in the letter dated 23.07.2002. Therefore, according to the learned counsel a harmonious reading of the letter dated 23.07.2002 and the letter dated 29.08.2002 would lead to the inevitable conclusion that the decision communicated in letter dated 24.06.2002 stood superseded and modified for the petitioners also. Learned B C D E F G H

A counsel further submitted that all the candidates whether departmental or deputationists appeared in the same examination for the purposes of being qualified to hold the post of JAO in DoT. All the candidates appearing in the examinations formed one class. Therefore deputationists B cannot be discriminated by providing higher qualifying marks in comparison to the marks required by departmental candidates.

12. In the other hand, learned counsel for the respondents submitted that the deputationists cannot claim to be equated C with the departmental candidates. The departmental candidates were being given an opportunity to get promotion in the normal line. The qualifying criteria for the departmental candidates was relaxed as a one-time measure in view of the peculiar situation that was being faced by the DoT employees at that time. The D qualifications for deputationists were specifically laid down in the Letter dated 24.06.2002. The aforesaid criteria was not applicable to the departmental candidates. It is submitted that there is no discrimination and the Division Bench had rightly rejected the claim of the appellants.

E

13. We have considered the submissions made by the learned counsel for the parties. The only issue that needs determination is whether the deputationist candidates could be distinguished from the departmental candidates in the matter of providing minimum qualifying marks in the examination in F question. In order to claim parity with the departmental candidates, the deputationists have relied upon the language contained in the letter dated 23.7.2002. The question that arises for consideration, therefore, is whether the deputationists are justified in claiming the parity with the departmental candidates G on the basis of the above letter.

14. In our opinion, a bare perusal of the Letter dated 24.06.02 would make it abundantly clear that the qualifying marks have been separately provided for the deputationists who H were to appear in the JAO Part-II Examination. The Letter dated

24.06.02 is as under:

"No.21-31/2001-SEA Government of India,

Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110001.

Dated: 24.6.2002

To

The ADG(DE),BSNL, Dak Bhawan, New Delhi-110001

Subject: Qualifying marks of JAO Part-II exam in respect of the exam appeared by deputationists.

Reference: Your U.O. No.10-1/2001-DE, dated 07.05.2002.

I am directed to refer to your letter under reference and convey that the qualifying marks in respect of the papers in the JAO Part-II exam taken by the deputationists will continue to be the same as that of the departmental candidates i.e. the deputationists have to secure 40% in each subject and 45% in the aggregate provided a minimum of 40% also secured separately in the practical paper with books. 45% in the aggregate for this purpose would mean 90 marks out of 200 marks (200 marks are the maximum marks of paper VII and VIII).

To be precise, as (i) both papers VII and VIII appeared in by the deputationists fall under one subject, (ii) Paper VII and VIII constitute the aggregate papers in the Exam for the deputationists and (iii) Paper VIII is practical paper with the aid of books, the following marks should be secured by the deputationists to declare him as qualified.

(i) 45% aggregate marks i.e. total of 90 marks in both papers VII and VIII put together.

A (ii) A minimum marks of 40% in paper VIII (Practical paper with aid of books).

(iii) No minimum marks is required in paper VII.

SD/-

B (D. SELVARAJ)

ADG (SEA)"

15. A perusal of the aforesaid letter clearly shows that it provided qualifying marks of JAO, Part-II Examination for C deputationists. The information has been given on a request made by BSNL for clarification.

16. The letter specifically refers to "qualifying marks of JAO, Part-II Examination in respect of the exam appeared by deputationists". It is then stated that the qualifying marks in D respect of the papers in JAO, Part-II exam taken by deputationists will continue to be same as that of the departmental candidates. It is further clarified that deputationists have to secure 40% in each subject and 45% in the aggregate.

17. From the above it becomes clear that the E deputationists were being treated as a class apart from the departmental candidates. It also becomes apparent that the conditions enumerated in the aforesaid letter did not apply to the departmental candidates. In our opinion there is no merit in the submission of Mr. Sushil Kumar Jain that since the letter F stated that the marks would be the same as that of the departmental candidates, the conditions laid therein also apply to departmental candidates. The aforesaid expression was clearly only indicative of the general standard that was expected of all the examinees. No material was placed on the record G either before the Tribunal or before the High Court to show that there has been any relaxation in the standard or the minimum marks required to be obtained by the deputationists. The qualifying marks prescribed in the letter dated 24.06.02 were not in any manner affected by the Letter dated 23.07.02 so far H as the deputationists were concerned. It related only to the

declaration of result of the departmental candidates. The letter dated 24.6.2002 issued with the approval of Member –F of BSNL had provided the lower standard of 33% for each subject and 35% in aggregate exclusively for the examination held in December, 2000. It appears that a one time concession had been given to the departmental candidates in special circumstances. If the standard had been lowered for the deputationists also, the letter would have made a specific provision in that regard. The fact that the names of the successful candidates were not arranged in order of merit also indicates that the letter related only to the departmental candidates. The intention was clearly to induct as many candidates from the lower ranks of Clerks, Accountants and Telephone Operators working in DoT to the higher posts of JAO provided they had reached the bare minimum standard. On the other hand, it is clearly stated in the letter dated 29.8.2002 that the list of deputationists, who have qualified in Paper VII and Paper VIII, have been arranged in order of merit. Therefore, undoubtedly the intention was to absorb only the best from the deputationist candidates.

18. The expression that the qualifying marks for the deputationists will continue to be the same as that of the departmental candidates in the letter dated 24.06.2002 would not mean that the deputationists would *ipso facto* become entitled for any relaxation in the standard which may have been given to the departmental candidates in the future. Condition No.6 which provides that the result of deputationists will be declared separately would also indicate that the departmental candidates had been segregated from the deputationists. Hence, the criteria for declaration of results for the departmental candidates is different from the deputationists. The results of the departmental candidates have been declared irrespective of the merit of the candidate. On the other hand, the result of deputationists has been declared in the order of merit.

19. The respondents have also given a clear justification for issuing the letter dated 23.7.2002. The relaxation related to

A the entire JAO Part-II Examination in five papers. All the departmental candidates had to appear in five papers of JAO Part-II Examination. On the other hand, the deputationists appeared only in one subject, i.e., Paper VII and VIII combined. The deputationists had already passed JAO Part-II Examination
B in their parent Postal Department. Therefore, the requirement of passing Part-I of the departmental examination had been relaxed in favour of the deputationists. They were required only to appear in Paper VII and VIII. Therefore, they could not claim to be equated with the departmental candidates. The rationale
C for providing the minimum qualifying marks of 40% in each subject and 45% in the aggregate for the deputationists is set out in the letter dated 24.6.2002. There was no scope for any confusion. This criteria has not been relaxed in the case of deputationists in the letter dated 23.7.2002.

D 20. In our opinion, the final decision has been taken by Government of India for relaxing the minimum qualifying marks for the departmental candidates as a one time measure in order to facilitate the departmental candidates to get promotion to the posts of JAO. Deputationists, on the other hand, had been
E provisionally allowed to sit in the examination subject to the final decision of the competent authority whether to absorb them or not. These conditions were made known to the deputationists in the policy decision dated 30.9.2000. The categorization of deputationists and the departmental candidates into the two
F categories, in our opinion, has been rightly upheld by the High Court. The law has been well settled for many years that members of one homogenous group have to be treated equally. At the same time Articles 14 and 16 do not mandate that unequals are to be treated as equals. In this case, the
G classification cannot be said to be either irrational or arbitrary. It had a clear nexus with the objects sought to be achieved, i.e., to fill in as many vacant posts from the departmental candidates working on the lower ranks provided they reached bare minimum qualifying standards in the JAO, Part-II Examination. So far as the deputationists are concerned, the respondents
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were entitled to insist on recruiting the best from among the deputationists. Hence, the higher criteria for deputationists cannot be said to be arbitrary or discriminatory. Such classification is permissible under Articles 14 and 16 of the Constitution of India. The law that Articles 14 and 16 permit reasonable classification of employees has been settled for many decades and reiterated in a catena of judgments by this Court. We may notice here only the observations made by the Constitution Bench in the case of *S.G. Jaisinghani Vs. Union of India* [AIR 1967 SC 1427] wherein this Court has held as follows:

> "The relevant law on the subject is well-settled. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification."

21. In view of the above, we find no merit in the appeals. We accordingly dismiss the appeals. There will be no order as to costs.

D.G. Appeals dismissed.