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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20.11.2014
Pronounced on: 24.12.2014

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W.P.(C) 1989/2014, C.M. NO.4155/2014

SH. VIJAY KUMAR DAHIYA AND ORS. Petitioners

Through: Sh. K.C. Mittal, Ms. Ruchika Mittal and
Ms. Kritika Sharma, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Sh. Ajay Digpaul, CGSC along with Sh.
C.M. Manaktala, Advocates, for UOI.

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W.P.(C) 2001/2014, C.M. NO.4179/2014

SH. MANJEET SHARMA AND ORS. Petitioners

Through: Sh. P.P. Khurana, Sr. Advocate with Sh.
Kewal Singh Ahuja and Ms. Prarthana Sampath,
Advocates, for petitioner nos. 1 to 6, 8 to 28 and
30 to 54.

versus

UNION OF INDIA AND ORS. Respondents

Through: Sh. Ajay Digpaul, CGSC along with Sh.
C.M. Manaktala, Advocates, for UOI.

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W.P.(C) 2013/2014, C.M. NO.4200/2014

GOVT. OF INDIA PRESS EMPLOYEES UNION Petitioner

Through: Sh. K.C. Mittal, Ms. Ruchika Mittal and
Ms. Kritika Sharma, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Sh. Ajay Digpaul, CGSC along with Sh. C.M. Manaktala, Advocates, for UOI.

Sh. S.D. Gupta, Sr. Advocate with Sh. P.S. Singh and Sh. Robin George, for intervener on behalf of 87 employees of Mayapuri.

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W.P.(C) 3410/2014, C.M. NO.7023/2014

DHARAM VIR SINGH

..... Petitioner

Through: Ms. Pragnya Routray, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Sh. Vikas Mahajan, CGSC with Sh. S.S. Rai, Sh. Rohan Gupta and Ms. Shalini Aggarwal, Advocates.

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W.P.(C) 3745/2014

YOGESH KUMAR

..... Petitioner

Through: Sh. Anil. K. Sharma, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Sh. Saqib, Advocate, for Resp. No.1.

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W.P.(C) 4952/2014, C.M. NOS. 9915-9917/2014

SH. PRAKASH PANT

..... Petitioner

Through: Ms. Pragnya Routray, Advocate.

versus

THE SECRETARY, GOVT. OF INDIA AND ORS..... Respondents

Through: Ms. Suparna Srivastava, CGSC with Ms.
Nishtha Sikroria, Advocates, for Respondent Nos.
1 to 3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT

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1. The Petitioners challenge the orders of the Principal Bench, Central Administrative Tribunal (CAT) dated 09-03-2014 in OA Nos.1909/2012, 1554/2012, 1848/2012, 2272/2012, 579/2013 and order dated 23-05-2014 in OA No.1621/2013. Their applications questioning the orders of the respondent-Union of India represented through the Government of India Press (hereafter called "UOI") were dismissed.

2. The brief facts of the case are that the Government of India Press advertised vacancies in various posts - (Group B, Group C and Group D). These included the posts of Assistant Binders, Carpenters, Assistant Plate Maker, Machine Attendant Offset; Machine Assistant, besides Group D (Laborers) posts. The vacancies were advertised on different dates, in relation to availability of vacancies in the different centers (Govt. Press Maya Puri, Nilokheri, Aligarh and Mainpuri). These advertisements were issued - as noticed earlier, on different dates. After screening the responses, the recruitment process was undertaken. In the case of Group C posts, the

selection process included trade tests besides interview; in the case of Group D posts, it included interviews. Different selection committees were constituted by the Central Government in respect of the different units/Presses. In the case of individual Presses too, depending upon the number of eligible applicants who had to be examined or considered, two or more selection panels were constituted. All those whose names figured in the select list were informed about their selection and were asked to complete formalities such as medical test, police verification, etc. On the basis of their merit in the select list, some applicants were issued appointment letters and allowed to join. A complaint was received by the Central Government, thereafter, alleging large scale irregularities in the recruitment process. On 03.04.2008, decision was taken at the Ministry level to stall the process of acceptance of joining reports by the selected candidates, till the investigation was complete.

3. Three candidates, Dharamvir Singh, A.K. Sharma and Harish Kumar, waited for a while. Since there was no development, they filed applications before the CAT. Dharam Vir Singh's application, i.e. O.A. No.377/2010; was disposed of by order dated 3.2.2010 directing the Central Government to decide the matter in terms of the earlier orders dated 7.12.2009 passed in O.A. No.1194/2009. The Central Government, thereafter, passed orders dated 14.7.2010 stating that it had decided not to appoint Dharam Vir Singh to the post. In these circumstances, he approached CAT in O.A. No.3264/2010 challenging the order dated 14.7.2010 by which he was denied the appointment. This was allowed by CAT, which directed the Central Government to appoint the applicant before it. Similar directions

were given in respect of the others, i.e A.K. Sharma and Harish Kumar in their applications; the CAT held that since many others were allowed to join and were working, fate of the applicants would be the same as those persons, and they would sink or swim with them. The orders of the CAT were challenged before this Court in W.P.(C) 4745/2011, 5825/2011 & 5962/2011 by the Central Government.

4. Before this Court, the Central Government had argued that an inquiry into the matter had been ordered which had been completed. A report was submitted by the inquiring authority, namely, Chief Vigilance Officer of the Ministry of Urban Development. The order dated 13.12.2010 was shown to the CAT, which was issued following the report of the inquiry. This court, in its order disposing of the writ petitions noticed and directed as follows:

"In the inquiry, following irregularities in the selection were found:

(i) Directorate of Printing had authorized/approved only 67 posts to be filled as Direct Recruitment vacancies/essential vacancies. Out of this, 14 posts were not advertised. Against the remaining 53 (67-14) posts, the Press advertised/notified 179 posts. The overall excess of posts advertised is 136 (179-53).

(ii) Approval of competent authority for advertisement of 136 excess vacancies as compared to 67 approved in relaxation of ban orders on direct recruitment has not been made available by the GIP, Aligarh/Directorate of Printing during the course of investigation.

(iii) In total the Recruitment Board recommended 133 candidates for various posts out of which appointments were made in respect of only 58.

(iv) 49 recruitments were made against 17 approved posts in Assistant Binder category. In addition 9 recruitments were made in the category of Carpenter, Assistant Plate Maker, M/C Attendant Officer and M/C Assistant Offset even though no posts existed in these categories. As a result, the total number of recruitment against unapproved posts was 41 (Asstt. Binder - 32, Carpenter - 1, Asstt. Palte Maker - 2, M/C Attendant Offset - 5 and M/C Assistant - 1).

(v) Out of 133 candidates recommended for appointment, 27 were against approved posts and 106 against unapproved posts.

(vi) The candidates appeared for interviews in respect of "Labourers" category in two spells, first on 22, 23 & 24 February and second on 28th and 30th March, 2008. Neither a marking sheet nor signed recommendations by members of the DPC which conducted the interviews from 22nd to 24th February, 2008 were available. Subsequently composition of the Committee was changed by replacing two members which later conducted the interviews on 28th and 30th March, 2008.

However, the final list of the selected candidates was prepared after the conclusion of the interviews in the second spell without marking sheet or signed recommendations by the Committee which conducted the interviews in the first spell. It is not clear on what basis the members of the Recruitment Board who have put their signatures on the final list of selected candidates have done so. The allegation of manipulation in the selection of candidates is, therefore, established on the basis of documentary evidence available on record. The members of the Recruitment Board who have put their signatures on the final list of selected candidates should be held responsible.

(vii) On the basis of the documentary evidence, it can be concluded that the allegation that Sh. Ravinder Singh appointed on the post of Labourer is son of Sh. Lal Singh, who represented as Member SC in the Recruitment Board constituted for Labourer category, is true. Sh. Lal Singh did not furnish the certificate to the effect that none of his family members was a candidate for the post

of Labourer 5 of 17 which is a mandatory condition for all the members of the Recruitment Board.

(viii) In view of the documentary evidence available on record, the allegation of irregular appointments in the inter-change category e.g. applicant applied for Labourer post selected for the post of Safaiwala etc. is established in four cases.

(ix) The allegation that irregular appointment of Sh. Yashpal Singh as Offset Machine Attendant has been made without requisite experience certificate is sustainable on the basis of documentary evidence on record.

(x) Based on the papers received, it is established that the application of Sh. Manjeet Sharma was considered for which the documents were received subsequent to the last date.

(xi) On the basis of facts available on records, the allegation of irregular appointment is Sh. Rajveer son of Sh. Nand Kishore as Carpenter is established.

(xii) On scrutiny of the details of candidates who were recommended for various posts by the Recruitment Board, it has been observed that in respect of 24 candidates in Labourer category, letters for appointment were issued that were not as per the merit list and the selection was random. The remaining 15 candidates out of 39 were not issued the offers of appointment.

(xiii) The verification of character and antecedents of the selected candidates in respect of Asstt. Binder (49), Asstt. Plate Maker (2), M/C Asstt. Offset (1), M/C Attendant Offset (5) and Carpenter (1) was done after their joining in the Press.

(xiv) Prima facie the allegation of favouritism/nepotism appears to be sustainable. However, based on the documents and evidence available, it is not possible to ascertain who are the agents of the Manager, GIP, Aligarh responsible for manipulating these selections."

13. We had summoned the record and we find that after the CVO had submitted the report, the same has been discussed at various levels. The opinion of the Ministry of Law is also taken. There is a note dated 18.11.2011 by an official citing the opinion of the Ministry of Law and proposing, namely, accepting the findings of the report of investigation of complaint; setting aside the process of recruitment in all the Presses; discharging of the appointed candidates on the basis of said vitiated selection process; identifying officers involved in irregularities and initiating disciplinary action against them and the manner in which such vacancies should be filled up in future to avoid recurrence of such malpractices. Having regard to the aforesaid position in law and the factual position emerging from the records, we are of the view that directions given by the tribunal are unsustainable. We, thus, set aside the impugned orders directing appointment of the respondents in these writ petitions allowing these writ petitions. At the same time, we substitute the order of the tribunal with the following directions:

"Final view in the matter shall be taken within one month from the date of this order. If the proposal, as mentioned above, namely, report of the CVO is accepted, the necessary action would be taken qua the persons already appointed as well. However, if for some reason it is decided not to accept the proposal and to continue with the existing appointments then the respondents herein shall also be appointed."

14. We may make it clear that we have not touched upon the question as to whether findings of the CVO that the selection process is vitiated because of irregularities stated therein is correct or not. It is not even necessary to do so as all those who are appointed are not before us and we cannot take any view in the matter in their absence. Therefore, needless to mention, in case the petitioners decide to scrap the selection process and the services of those appointed are terminated, they shall be within their right to challenge the action of the Government on its own merits and as per law."

5. After the above remand, the Central Government issued an order, rejecting the candidature of the present petitioners- who had been by then appointed and were working in the Government Presses at Mayapuri, Delhi, Nilokheri and Aligarh. These orders were challenged through various applications before the CAT. The UOI relied on the enquiry reports submitted by its Additional Secretary and Chief Vigilance Officer, Ministry of Urban Development, in respect of each of the units/ Presses and by orders dated 04-05-2012 and 21-05-2012 cancelled the appointments made already. The latter order states as follows:

“The undersigned is directed to say that consequent on receipt of complaints regarding large scale irregularities in the recruitment process followed in the Govt. of India Presses during 2007-08, the matter was handed over to Chief Vigilance Officer, Ministry of Urban Development for investigation.

Reports of CVO in respect of Govt. of India Presses Mayapuri, Minto Road, Nilokheri and Aligarh have been received wherein it has been found that large number of irregularities have been committed in conducting selection of candidate for recruitment. However, no appointments were made in Govt. of India Press, Minto Road as the recruitment process was stopped before finalization of the selections. The reports of CVO in respect of these presses have been examined in the Ministry and accepted. It has been decided with the approval of Minister of Urban Development to cancel/terminate the appointments in respect of all the candidates including those who have joined the service.”

6. Aggrieved by the above decision and orders of the UOI, the Petitioners approached the CAT. By its impugned order, the CAT rejected their contentions. In these circumstances, the petitioners have approached this court under Article 226 of the Constitution. The employees selected and

appointed to the Mayapuri Press in Delhi have approached this court by filing W.P.(C) 2013/2014. The employees working in the press at Nilokheri have filed W.P.(C) 1989/2014 and 4952/2014. Employees who were appointed at the Aligarh Press have on the other hand, filed W.P.(C) 2001/2014, 3410/2014 and 3745/2014.

7. Mr. K.C. Mittal, learned counsel for the Petitioners argued that after holding that the recruitments in the Nilokheri Press (whose employees he represented in W.P.(C) 1989/2014 and 4952/2014) did not disclose infirmities, such as nepotism and more recruitment than the number of vacancies available, the CAT should not have directed cancellation of the Petitioners' appointments, on the ground that the interview was conducted for an impossibly short period. It was argued that this ground could apply to Group D employees and not Group C employees, who were far fewer in number and, therefore, had been interviewed for sufficiently long. It was submitted that the ground of number of vacancies being far less than what was recommended and actually filled was mistakenly invoked, though the material on record clearly showed that the number of sanctioned posts as well as requirements were taken note of in the Central Government's orders dated 18-5-2007 and 05-07-2005. These clearly established that the number of vacancies earmarked and available for such Group C employees like Assistant Binder, etc were sufficient. It was argued that the number of posts advertised were filled up but the issue raised by the CVO in its report was that the number of vacancies advertised were not sanctioned. This, the counsel submitted, was an entirely incorrect premise. It is submitted that the CAT seems to have not even gone into the records to ascertain the facts and

the report of the CVO. Nilokheri Press, according to the newspaper advertisement, had advertised different posts that were advertised such as Offset Machine Attendant, Offset Machine Assistant, Offset Plate Maker, Wiremen, Assistant Binder, Labourer, Peon, Mali, Chowkidaar, Safaiwala. These were the different posts which were notified, against which the number of vacancies for each posts were also indicated. Learned counsel also argues that according to the appointment letter the maximum period of probation was two years and the same was neither extendable nor there was any clause requiring any specific confirmation from any authority and, therefore, in the face of these facts even the finding of the learned Tribunal with regard to non-completion of the Petitioners' probation is incorrect.

8. Ms. Pragya Routaray, learned counsel for Petitioners in W.P.(C) 4952/2014 argued that CAT erred in not considering the CVO's report pertaining to Nilokheri, and instead appeared to have considered the findings of the CVO in respect of the recruitment at Aligarh. In this regard, it was pointed out that the nature and category of posts advertised in Aligarh differed from what were advertised in Nilokheri; in considering the CVO's report pertaining to Aligarh and holding that there were fatal infirmities in the selection process, CAT erred in law.

9. Mr. Mittal, who also represented the employees appointed to the Mayapuri Press, pointed out that the CVO in his report made the following observations :

"v Large number of interviews for the post of Peon, Safaiwala, Faras, Chowkidaar and Labourer were held in extremely short time in GIP, Mayapuri which is not amenable to fair assessment."

It was urged that from the CVO's observations, as regards other posts are concerned, showed no irregularity with regard to the holding of interviews and the selection is absolutely fair and proper. Yet, the CAT upheld scrapping of the entire selection process even in respect of the other posts which were notified rather than considering the limited aspect vis-à-vis Peons, Safaiwalas, Faras, Chowkidar and labourers, etc.

10. Mr. G.D. Gupta, Learned senior counsel, appearing for the Group D employees of Mayapuri, argued that the finding with respect to short interview time was erroneous. Counsel pointed out that the candidates were interviewed in fact, in batches and asked to perform practical duties to assess the suitability by the Selection Panel. This fact was overlooked by the CVO, and consequently, CAT in its impugned order. It was emphasized that the decision to terminate is in effect, punitive in nature and content, because the employees were all confirmed after having put in more than twice the prescribed period of probation. In the circumstances, CAT should not have upheld their termination, but relegated them to a regular and full-fledged inquiry where they could have established their innocence. The department was under a duty to charge them for misconduct, if they were involved in any unfair practice at the stage of selection. It was also urged that the decision to terminate the petitioners was taken after four years of their having joined employment; thus it acted very harshly upon them, considering that they were not highly educated and would also face age bar in all subsequent employment opportunities. Consequently, argued learned senior counsel, the impugned order is liable to be set aside. Furthermore, all Selection Committee Members charged with irregularities were exonerated and that equities arise in their favour given that a period of four years were

completed. The maximum period of probation in terms of the OM of September, 2011 was completed and the rights crystallized in respect of the posts by virtue of the decision in *State of Gujarat v. Akhilesh C. Bhargav* 1987 (4) SCC 482.

11. Similar arguments were addressed by counsel in respect of employees/ Petitioners who were selected and appointed in the Aligarh Press (W.P.(C) Nos. 2001/2014, 3410/2014 and 3745/2014). Learned counsel also argued that the findings and observations of the CVO with regard to vacancies in this press - like that of the other units, could not have been upheld. Counsel stressed that the vacancies advertised were in accordance with the senior official's (General Manager's) assessment, after approval and the employees could not have been faulted with any deficiencies. It was also argued that there was no irregularity in the notification of vacancies, because the charts were prepared after the 18-05-2007 letter was issued and duly scrutinized. It was also submitted that having held that there was no force in the argument with respect to the excess recruitment of employees over the number of vacancies, in favour of the petitioners, the CAT should not have dismissed their applications, on the basis of something which was not held by CVO in his report. It was submitted in this context that the interview irregularities applied only to Group D employee/candidates and not to Group C employees, who had to undergo trade test and also face interview. Being in far fewer numbers, there was adequate time with the Selection Committee to appraise their suitability before recommending them. These employees also argued that as their period of probation had ended, they could not have been terminated without a departmental enquiry into

allegations against them. The termination orders, it was urged, were unfair and utterly arbitrary.

Contentions of the respondent

12. It is argued, on behalf of the Government of India Press, that the decision of the CAT is unexceptionable and does not call for interference. Submitting that the recruitment process in all three centres was fundamentally flawed, counsel highlighted that the CVO had prepared reports which painstakingly outlined the fatal infirmities.

13. Arguing that the report in respect of Mayapuri Unit revealed that nepotistic practices prevailed in the recruitments, counsel highlighted that 61 out of the 100 candidates selected were related to some senior officer in the department or the other. It was also submitted that the candidature of apprentices was completely ignored, wherever such applicants were trained in the concerned trade, and the report (for Mayapuri) revealed that interview letters were issued 5-7 days before the date of interview.

14. Likewise, it was argued that the advertisement was issued on 7.12.2007 and the last date notified for receipt of application was 22.12.2007. It was submitted that 44 unapproved vacancies in respect of various cadres were advertised and were subject matter of the recruitment process. Counsel stated that the highlighted infirmities mentioned in the CVO's report for Mayapuri underline that, taken as a whole, the Government of India Press was justified in scrapping/cancelling the entire recruitment process. It was submitted that even though there was no specific finding on this aspect, the discussion in the impugned order and the

conclusion recorded in paragraph 7.2 shows that the CAT was not inclined to interfere in favour of the applicants.

15. It was urged – in respect of the recruitments in the Aligarh Unit that paragraphs 3.1 - 3.7 of the CVO's report has outlined several infirmities. Even though, the CAT has not made any specific adverse findings, counsel stated that it is open to the Union of India to show the material which formed the basis of the ultimate decision to deny relief to the applicants. Learned counsel submitted that the petitioner's arguments that the CAT recorded adverse findings only in respect of the short time given for interview to the candidates is an incorrect premise and relied upon paragraph 7.1 and 7.2 of the impugned order. It was urged that likewise in Nilokheri, 44 recommendations were made against 17 approved posts and 27 unapproved posts and that out of 33 candidates appointed, 18 were in respect of unapproved posts.

16. Learned counsel stated that for all the Units, i.e., Mayapuri, Nilokhedi and Aligarh, the governing decisions contained in the Minutes of meeting of 5.7.2007 held under the Chairmanship of Additional Director and Head of Department, Directorate of Printing, had clearly mandated that all Presses had to circulate to other sister GIPs details of their surplus employees who could be transferred or redeployed to the other sister Presses by 15.7.2007 and more importantly, advertised posts that were to be filled up by them on direct recruitment basis/deputation. This clearly limited the discretion of the Units which were not expected to fill all the vacancies which had been determined and noticed in the Office Order of 18.5.2007. It was stated that, whereas, the number of posts identified for the purpose of the Government Presses at various locations after modernization was much larger the number

of posts identified for the purpose of direct recruitment and transfer was a smaller figure. Each Press had to comply with the later order embodied in the Minutes of meeting of 5.7.2007 and indicate the vacancies that had to be filled through direct recruitment. Instead of doing so, the Selection Committees in the present case went ahead and selected far greater number of candidates than the available vacancy. This pointed to a clear mistake on the part of the various Units and the Selection Committee who understood and interpreted the Circulars contrary to their intent. It was argued, therefore, the Central Government was entitled to exercise discretion and cancel the entire recruitment process, instead of carrying out a segregating exercise of trying to salvage a part of it. This exercise, it was submitted, is in conformity with the judgment of the Supreme Court in *Union of India v. O. Chakradhar*, (2002) 3 SCC 146. Reliance was also placed upon the decision in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612, for the proposition that the recruitment agency is not bound to make appointment and operate the entire select list for good and valid reasons. Learned counsel for the Government of India Press, lastly, argued that no candidate has a right to contend that he ought to be appointed. At best, he has a right to be considered for appointment. In the present case, even though, the appointments were made – of a large number of individuals, the fact remains that the fatal infirmities undermined the recruitment process. This is not a case where the petitioners can be said to have acquired an entitlement or lien to the post so as to claim that upon completion of their probation period, their services cannot be terminated. It was further urged that the petitioners cannot insist that any violation of principle of natural justice took place. The concerned authorities considered the entire records after the previous

judgment and order of this Court in the writ proceedings and made the order cancelling the entire recruitment process. There is no arbitrariness or unfairness and that no individual has been discriminated against or given favourable treatment.

Analysis and Findings

17. It can be seen from the above discussion that immediately after the recruitment process was over, apparently complaints started pouring in - these alleged various irregularities. By the time action could be initiated and taken, several selected candidates were appointed. The action in cancelling the selections was challenged. Ultimately, the matter reached this court in W.P.(C) 4745/2011 and connected petitions; this Court directed the Central Government to take an informed decision, after applying its mind to all the facts and materials before it. The impugned orders of 04-05-2012 and 21-05-2012 were issued pursuant to that judgment of this court.

17. The Court first proposes to deal with the common contentions of the petitioners. They are two in number. The first is that the Central Government could and should have made an attempt to segregate or separate the selected successful candidates whose role and involvement was dubious in the recruitment process from other successful candidates, who were innocent of any malpractice, especially when it was possible for it to do so. In this submission, reliance was placed on *O. Chakradhar (supra)* - in fact the respondents too relied on the same decision.

18. In cases involving use of unfair means in public examinations and recruitment processes carried out by state agencies, it is necessary that the fairness of the process should be asserted by a non-discriminatory approach. No doubt, there are observations in *O. Chakradhar (supra)* suggestive of a

circumspect approach by the state agencies who have to take a slightly individualist and graded decision. Yet, the mandate of Article 14, to ensure a uniform and non-discriminatory standard is compulsive. Once grave infirmities are detected, the extent and nature becomes relevant to decide what remedial measures can be taken. In *Prithpal Singh v. State of Haryana*, 1994 (5) SCC 695, for instance the Supreme Court held that:

"It is in the public interest that members of the police force should be selected objectively and fairly. The irregularities found in the instant case show that the selection made by the Board was not objective and fair. It is, therefore, in public interest that selections and appointments made consequent thereon be quashed forthwith".

In *Krishna Yadav v. State of Haryana* (1994) 4 SCC165, the Supreme Court observed as follows:

"Public offices, both big and small, are sacred trusts. Such officers are meant for use and not abuse. In this case fraud has reached its crescendo. The acts were motivated by extraneous considerations. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shock the Court's conscience to come across such a systematic fraud. The High Court was not justified taking the path of least resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

In *O. Chakradhar (supra)* itself, the Court held that:

"..the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is no

widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. "

It is, thus, evident that no universal rule that wherever irregularities are found or discerned, the appointing authority or Government department is obliged to first examine each case, to determine if some individuals' selections can be salvaged, or if the entire selection process should be cancelled can be seen. That is a fact dependent exercise, contextual to the circumstances of a given case.

19. The next question is whether this Court is constrained by the findings of the CAT in respect of some of the issues on which it has not found against the Petitioners. On this question, all counsel for the petitioners had argued that since the Central Government had not preferred any proceedings against those findings, it cannot urge that the CAT's findings were incorrect. Counsel for the Central Government, on the other hand, argued that without preferring any separate writ petition, it is open for it to argue that the adverse findings against it, of the CAT, were not justified.

20. In *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Collector of Central Excise*, (1998) 3 SCC 540, the Supreme Court expressed its views on the topic as follows:-

"26. The aforesaid decision was cited before another three Judge Bench in the case of Baru Ram v. Prasanni, where it was not dissented from. But in the light of the decision of the Constitution Bench of this Court in Ramanbhai Ashabhai Patel v. Dabhi

Ajitkumar Fulsinji, the ratio adopted in the earlier-mentioned two decisions is no more in vogue. The Constitution Bench held that this Court has power to decide all points arising from the impugned judgment and even in the absence of an express provision like Order 41 Rule 22, Civil Procedure Code, this Court can devise appropriate procedure to be adopted at the hearing. The observations of the Bench which are relevant now are the following :--

"There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We can not lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Consideration of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment. We are, therefore, of the opinion that in Vashisht Narain Sharma, case too narrow a view was taken regarding the powers of this Court....."

We, therefore, concede that the respondents can not be precluded in this appeal from canvassing for reversal of a finding contained in the impugned judgment despite its end result being in their favour."

The Supreme Court had referred to a previous judgment in *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji* AIR 1965 SC 669, by a Constitution Bench which ruled that a party can always support the judgment in his favour even on grounds that were negatived in the impugned judgment, without preferring an appeal. This point was again driven home by the Supreme Court in *Anil Kumar Gupta and Ors. v. Municipal Corporation of Delhi & Ors.*, AIR 2000 SC 659. In Paragraph 16 (1) the Court articulated the question and in Paragraph 17 answered it. The discussion is as follows:

"16. (1) Whether the respondents can justify the final order of the High Court on other grounds upon principles referable to Order 41, Rule 22 of the Civil Procedure Code without filing an appeal in time ?

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...In view of the recent judgment of this Court in Ravindra Kumar Sharma v. State of Assam (1999) 7 SCC 435 : (AIR 1999 SC 3571), it is, in our opinion, open to the respondents to attack the adverse findings arrived at or observations made by the High Court, even if the respondents had not filed a separate appeal against that part of the judgment. Hence, the respondents can contend that the finding or observations that their appointments were tainted was not correct. We have also condoned the delay in filing the Special Leave Petition (CC 3960/99) and therefore, for both reasons, it will be open to them to attack the said finding in the appeals of the appellants or as appellants in their own Civil Appeal arising out of SLP (CC 3960/99)."

In view of the above discussion, it is held that the Central Government can support the conclusions in the impugned order, even while highlighting the errors in respect of some of the issues, in the present proceeding.

21. The court would proceed to first consider the question of excess recruitments. In this regard, the relevant first document, is the letter written on 18-05-2007. That is extracted below:

*"No.20(5)2002-A.III
Government of India
Ministry of Urban Development
Directorate of Printing
312 'B' Wing, Nirman Bhawan
New Delhi-110011*

Dated 18-5-2007

OFFICE ORDER

*Sub: Sanctioned strength of various Government of India Presses
(under modernization scheme) – Notification regarding*

In pursuance of the Govt. of India decision dated 16.8.2002 and 1.2.2006 for modernization of Govt. of India Presses and in consultation with the Ministry of Finance, the undersigned is directed to convey the approval of the Ministry of Urban Development for the creation/revival/transfer/filling up of the posts in various Government of India Presses as follows:-

- (i) Creation of 693 posts (115 posts to be filled up by direct recruitment and 578 posts to be filled by redeployment)*
- (ii) Revival and filling up of 464 vacant posts; and*
- (iii) Retention of 134 existing posts in Govt. of India Press, Shimla*
- (a) Filling up of the 26 vacancies through Direct Recruitment.*
- (b) **Redeployment** of 22 employees of Shimla Press (**Annexure-‘E’**)*
 - (iv) Retention of 181 existing posts at Govt. of India Forms Store, Kolkata and 19 posts at Office of Assistant Director (Outside Printing) Kolkata, subject to no further recruitments or creation of posts in both of these offices.*
 - (v) Creation and abolition of posts will be done simultaneously.*
 - (vi) All actions are to be completed by December 2007.*
 - (vii) Regarding the surplus posts in the GIP, Shimla and GIFS, Kolkata these post shall be treated as surplus w.e.f. date of issue of this order. However, these surplus posts will be abolished after individual posts are identified and incumbent exercises his option for Special VRS or get absorbed/redeployment elsewhere, if possible. After the expiry of 6 months from the date of this order, the surplus posts shall be treated as vacant and abolished failing which action will be taken after Industrial Disputes Act, 1947.*

2. The details of posts to be created and filled up by direct recruitment and through redeployment mentioned at (i) above are as per **Annexure-A** and **Annexure-B**.
3. The details of the 464 vacant posts to be revived and filled up in various categories mentioned at (ii) above are as per **Annexure-C**.
4. Out of 1172 posts in Govt. of India modernized Presses coming under abolition, 876 posts have already been abolished and 296 posts will be abolished during the course of filling up of the posts through redeployment.
5. Consequently, the overall sanctioned strength of various categories of posts in the 12 modernized Presses, - including Govt. of India Press, (Production-cum-Training Centre), Shimla, - will henceforth be 6469. The details of revised sanctioned strength of various categories of posts in each Press are as per **Annexure-D**.
6. The Govt. of India Text Books Presses at Chandigarh, Bhubaneswar and Mysore are to be privatized and 470 available posts (**at present actually available 357 posts**) in these Presses are to be retained till the retirement of the staff.
7. This issues with the approval of the Ministry of Finance, Department of Expenditure vide their I.D. No.911/E.Coord I/2003 dated 14.5.2003 and I.D. No.158/Dir.(Pay)/E.Coord.I/2007 dated 14.2.2007.

(R.C. Gupta)

Deputy Secretary (P-II) ”

22. It is evident that this order was a general one; it related to identification of vacant posts, the total sanctioned posts in various cadres and staff requirement in the light of modernization of Govt. Presses at various locations. The next document is the Minutes of Meeting held on 5-07-2007 under the chairmanship of Shri S.K. Vyawahare, Additional

Director(Admn) and HOD Directorate of Printing to discuss various issues related to modernization of the presses as well as filling up various posts in different categories as per the sanctioned strength after modernization in accordance with the decision of the Government. This was attended by 13 other senior level officers from the Directorate of Printing. The relevant part of the minutes reads as follows:

“5. Thereafter all the presses were required to inform the action taken by them so far and also to seek clarifications on any related issues. During discussion in the meeting, the following decisions were taken:

- a) The vacant posts in each category will be filled up by the method indicated in Annexure-A, B & C of the Office Order No.20(5)/2002-A-III dated 18.05.2007. The remaining vacant posts out of the sanctioned strength consequent upon modernization of the Presses will be filled up as per Recruitment Rules relating to the concerned post. However, total number of posts to be filled up should not exceed the number of total strength of each category of post as mentioned in Annexure-D of the said Office Order.*
- b) In order to give the benefit of absorption by way of redeployment, the Presses will send their proposals for one time age relaxation to the Directorate of Printing. After compiling the information the concerned Administrative Sections in the Directorate will submit the matter to the competent authority for approval of one time age relaxation so that maximum number of surplus employees can be redeployed/absorbed.*
- c) The date of issue of notification indicating the sanctioned strength of Government of India Presses under modernization scheme, i.e. 18.05.2007 will be the crucial date for determining the age limit for redeployment/absorption of surplus staf . However, this will be sent to the Ministry of Urban Development for confirmation and in case of any change the same will be informed. The Government of India Presses may work out their calculation on the basis of 18.5.2007. The Presses which have prepared the information asked for by the Directorate of Printing*

vide their letter No.20(5)2002-A III dated 26.06.2007 taking into account any other date than that of 18.05.2007 will revise their information and send the same to this Directorate of by 10.07.2007 positively.

d) Priority for absorption/redeployment within the same Press will be given to the employees according to their seniority subject to clearing the trade tests, wherever applicable.

e) The interest of the surplus employees has been taken care of by way transfer/redeployment/absorption and also special voluntary retirement scheme. However, creation of super-numerary posts as demanded by some Associations will not be possible as this will be against the spirit of the Government decision regarding modernization of Government of India Presses.

f) The surplus employees are allowed to give their options for transfer/redeployment to other Government of India Presses wherever possible. They will also be eligible for Special Voluntary Retirement Scheme for surplus Government employees as per DOPT's O.M. No.25013/6/2001-Estt.(A), dated 28.02.2002 in terms of notification No. (-17034/2(B&F)/CM/Status Report published in the Gazette of India on 24.07.2006.

g) It has been noticed that the Recruitment Rules for some of the newly created posts under modernization scheme of the Presses do not exist. The concerned Presses will consult the model RRs for these posts as may be issued by DOPT or may be available in other Departments/Organizations. On the basis of these model RRs, the concerned Presses will prepare draft RRs for such posts and send the same to the Directorate for further examination and finalization. They will also take necessary action to fill up such posts on ad hoc on the basis of draft RRs as prepared by them and approved by the Directorate of Printing.

h) The data relating to surplus staff and their absorption/redeployment and the options obtained from them for redeployment, etc. is being compiled in the Directorate of Printing for monitoring the absorption/redeployment process. However, it has been decided that to maintain transparency and uniformity in approach, guidelines will be issued by the Directorate of Printing laying down the criteria for redeployment, for example length of

service, clearing tests/training wherever required and suitability for the post, etc. These guidelines will be circulated to all the Presses and also to the recognized Associations/Unions. The seniority of such redeployed surplus employees will be governed by the clarification given by the Directorate of Printing earlier.

i) The employees in the Government of India Test Book Presses located at Chandigarh, Bhubaneswar, Mysore would be given opportunity to give their option for absorption/redeployment in other Presses and also to seek Special VRS. This has already been notified in the Gazette of India on July 24, 2006.

j) As a consequence of modernization in all the Government of India Presses latest machinery will be procured and installed which would require minimum manpower for the operation of such machines. Further the total sanctioned strength of all the Presses has been increased with reference to the existing staff in position. It is also relevant that the spirit of modernization is to acquire latest technologies in Printing which would need a very less staff strength. The management of the presses will educate their employees and Associations about this fact.

k) All the Presses will circulate to other sister GIPs with a copy to the Directorate of Printing, the details of their surplus employees who can be transferred/redeployed in other sister Presses by 15.07.2007, if not circulated earlier. They will also advertise the posts which are to be filled up by them on direct recruitment basis/deputation basis upto 20.07.2007 positively. All the GIPs will also send a fortnightly reports based on status upto 15 should be sent as on 15.7.2007 and should reach Directorate of Printing on or before 20.7.2007 indicating the action taken regarding filling up of the posts in each category as well as regarding Special VRS applications received and their status.

l) The break up of the post required to be retained in Government of India Forms Store Kolkata will shortly be intimated by the Directorate of Printing. In this regard action is being taken by DD (B&F).

m) In regard to revival and filling up of 464 vacant posts shown in Annexure-C, it is noticed that out of 464 posts, 14 posts of Special Grade Machine Man (Of set) (Rs.5000-8000) have been shown against Government of India Press, Nashik but these posts have

not been mentioned in Annexure-D containing the total sanctioned strength of each category of post of Government of India Presses. It has, therefore, been decided that these posts will have to be kept in abeyance till a decision is taken in consultation with the Ministry of Finance.

n) The training will be imparted to the employees wherever required by taking the help of training facilities available in Shimla, Faridabad & respective presses.

o) The action for filling up of the vacant post is to be completed by the stipulated dated, i.e. 31.12.2007 positively.

p) In case action for filling up of any category of posts is not possible by 31.12.2007, its intimation alongwith the detailed reasons must be sent to DOP by 31.8.2007 positively so that decision of the Government can be taken thereon.

q) It was also decided that GIPs will point in writing the discrepancies, if any, in the Recruitment Rules and the DOP will examine the same and communicate the decision thereon.

r) It was pointed out by some presses that in place of Medical Officer, Ministry of Health has posted Sr. Medical Officers who are in the higher scale of pay than that mentioned in the sanctioned strength. It was informed that the issue will be taken up with Ministry of Health and Family Welfare as well as Ministry of Finance, for a clarification.

s) It was informed that DOP will nominate a member required for DPC after the Government of India Presses fix up a date for the DPC meeting. The request in this regard must be received in the DOP at least 10 working days in advance.

The meeting ended with thanks to the Chair.”

The crucial part of this document is that while it took stock of the previous letter, it sought to operationalize the manner of filling of posts identified earlier. Importantly, Clause 5 (k) mandated that the concerned units (Govt. Presses) “will also advertise the posts which are to be filled up by them on direct recruitment basis/deputation basis..” This was the aspect which

impressed the CVO when he undertook the task of reviewing the recruitment process in each Press and preparing the reports.

23. The report in respect of Mayapuri Press (W.P.(C) 2013/2014) highlighted the following deficiencies:

“Part-IV

7. **Summary of main findings:** *In the entire recruitment process, it was found that*

(i) *Posts advertised by GIP, Mayapuri in December, 2007 was in excess of approved number of posts essentially required to be filled as per Directorate of Printing Office Order No. O.M.20(5)/2002-A.III dt.18.05.2007.*

(Para 3.4)

(ii) *Appointments of 110 candidates (Annexure D) have been made by direct recruitment (whereas no post by direct recruitment was to be filled up at GIP Mayapuri in terms of para 2 read with Annexure A of the Directorate of Printing Office Order No.O.M.20 (5)/2002-A.III dt.18.05.2007 at Appendix 1).*

(Para 3.4)

(iii) *Specific approval of competent authority for filling up of the posts by direct recruitment in relaxation of ban orders appears to have not been taken by the Press authorities from the Ministry of Urban Development through the Directorate of Printing prior to advertisement and filling up the posts.*

(Para 3.4)

(iv) *Appointment of Shri Hitesh Sagar to the post of Artist Retoucher has been made by the then Manager, GIP, Mayapuri vide O.M. dated 15.02.2008 without the approval of the Competent Authority i.e., Director, Directorate of Printing which is to be treated as irregular.*

(para 3.4)

(v) *A large number of interviews for the posts of Peon, Safaiwala, Farash, Chowkidar and Labourers held in a very short*

time at the GIP, Mayapuri.

(Para 5.2)

(vi) Majority of appointments made were relatives of existing employees of the Press which could not be on merit alone and nepotism and favoritism cannot be ruled out.

(Para 5.3)

(vii) Elder son of Shri Devendra Singh, Asstt. Manager (T), GIP, Minto Road, has been appointment for the post of Assistant Mechanic in GIP, Mayapuri.

(Para 5.3)

(viii) Direct Recruitments in GOI Press Mayapuri have been made without any verification of character and antecedents of the candidates.

(Para 5.8)

(ix) Appointments to the post of Labourer were made in excess of the posts advertised.

(Para 5.9)

(x) Appointments to the post of Labourer made was also in excess of the number of candidates recommended by the Recruitment Committee.”

Para 3 of the Mayapuri report took note of the 18-05-2007 order and had in the course of the analysis revealed through two tabular statements, the requirement of posts and those which had to be earmarked for direct recruitment. This para, to the extent it is relevant, is extracted below:

“3.3 Thereafter, in regard to filling up of vacancies as per pre-revised sanctioned strength, Directorate of Printing in its O.M. No.16/8/2007-AI dated 2/9.8.2007 (Appendix-3) requested all Managers of GIP Presses that all cases requiring relaxation of any provisions of the recruitment rules which have become necessary for filling up the posts through either by direct recruitment or promotion/re-deployment/transfer, should be

identified and put up to Secretary, Ministry of Urban Development in a consolidated manner by fourth week of August, 2007.

3.4 The Government of India Press, Ring Road, Mayapuri, issued an advertisement (Annexure A1-3) in December, 2007 inviting applications for filling up various posts. Fifteen days time-limit was fixed for receiving application from the date of advertisement. IN total 94 posts in 21 categories (including three posts in 2 categories of posts to be filled up by deputation) were advertised. Details of post-wise number of vacancies, number of applications received, number of candidates interviewed, number of candidates recommended for appointment (by direct recruitment) and number of candidates actually appointed are given at Annexure B. It may be seen that in 15 categories of posts, a total number of 110 candidates (Annexure B) were finally appointed against a total of 91 vacancies advertised for filling up by direct recruitment. Apart from above, in one category (at Serial No.16 for the post of Khalasi Electrical) even though the interviews were held, no candidate was recommended for appointment (Annexure M16). In some other categories, at Serial No.17 (Wireman), 18 (General Storekeeper – by deputation), 19 (Asstt. Inspector Control – deputation), 20 (Jr. Artist I) and 21 (Offset Machine Man), neither any application (by direct recruitment) was received nor any interview was held and no appointment was made (Annexure P).

3.5 Following conclusions can be easily drawn from the above: -

- (1) The Directorate of Printing had authorized/approved filling up only 33 posts and that too by methods other than Direct Recruitment. Out of this, 14 posts were neither advertised nor filled up. Against the remaining 19 posts, the Press advertised 94 posts (91 to be filled up on Direct Recruitment and 3 by Deputation).*

(2) *Against the 94 advertised vacancies, the Press finally recommended/appointed 110 posts.*

(3) *Approval of competent authority for filling up of these 110 posts through direct recruitment in relaxation of ban orders on direct recruitment has not been made available by the Press/Directorate of Printing.*

Competent Authority for the appointment of post of Artist Retoucher is Director, Directorate of Printing (Annexure G), whereas the appointment of Shri Hitesh Sagar to this post has been made by the then Manager, GIP, Mayapuri vide OM dated 15.02.2008 (Annexure-W) without the approval of the Competent Authority. The appointment of Shri Hitesh Sagar for the post of Artist Retoucher is therefore irregular.”

The total number of posts advertised was 91 as against the approval to fill 33 posts otherwise than by direct recruitment. As many as 110 selections were made. There was no approval to fill 110 posts. In the light of this factual determination, it could not have been said that the Central Government fell into error in cancelling the entire process of recruitment, for Mayapuri. Here, the court notices that the malaise was not only in regard to the amount of time given to the Selection Committee for interviewing candidates; the error or mistake was more fundamental. *There were no posts that could have been filled by direct recruitment*. Thus, the entire basis of recruitment to various trade based posts as well as Group D posts had been undercut. The CAT, in this court’s opinion fell into grave error in concluding that

“...these were all administrative lapses and the applicants cannot be penalized for the wrong doings of the respondents. If there were any discrepancies in the number of posts advertised and filled, it was for the respondents to correct those by taking post facto sanction of the competent authority. We, therefore, agree with the

applicants that this alone cannot be a ground for scrapping of the selection.”

The CAT’s reasoning is rather blithe in its disregard to public constraints in functioning of Government departments; it is based on a casual assumption that *post facto* approval can be obtained – indeed should be sought and given as a matter of course. Such a sanguineness mistakenly premises public employment as a largesse.

24. A similar disregard is discernible in respect of the Government Press at Nilokheri (W.P.(C) 1989/2014 & 4952/2014). The CVO’s report here summarized his conclusions as follows:

“7. Summary of the main findings. In the entire recruitment process, it has been found that:

*(A) GIP, Nilokheri during the year 2007 & 2008 advertised 125 posts which were in excess of 90 approved number of posts essentially required to be filled as per Directorate of Printing Office Order No.20(5)/2002-A.III dated 8.05.2007. Out of 125 posts advertised, 65 were approved posts and remaining 60 were not approved. 25 approved posts were not advertised. **(Para 3.5.1 & 3.5.2)***

(B) Against the 125 posts advertised, the Recruitment Boards recommended 44 candidates for various post. The press made appointment for only 33 posts. Ten persons were not allowed to join at Nilokheri Press subsequent to suspension of Recruitment Process on 3-4-2008 as per directives of Directorate of Printing.

Appointment of one candidate for the post of Artist Retoucher was not approved by DOP and hence no offer of appointment was issued against this post.

(Para 3.5.3)

(C) Out of 44 candidates recommended for appointment 17 were against approved posts and 27 against unapproved posts. **(Para 3.5.4)**

(D) Out of 33 candidates appointed, 15 were against approved posts and 18 against unapproved posts. **(Para 3.5.5)**

(E) There is no evidence to support any allegation of bribe or manipulation against any official of the GIP, Nilokheri. **(Para 5.1.5)**

(F) No records are available to substantiate the allegation that Shri Mehra has purchased a car and a property at Mayur Vihar. However, Shri Mehra is stated to have purchased a flat at Dwarka as informed by himself to his office, the sources of funds for which is being examined by Directorate of Printing. In the event of any prima facie case of disproportionate assets, the matter may be referred to CBI by Director of Printing. **(Para 5.1.5(b))**

(G) The orders dated 25.1.2008 for giving additional charge of Manager, GIP to Shri C.S. Mehra, Deputy Director, Directorate of Printing vice Shri S.R. Bodra were issued by the Directorate of Printing without any authority in the midst of interview process already on. This appears to have been done to influence the recruitment process. Director/Addl. Director (Printing) should be held responsible for this. **(Para 5.1.5 (c))**

(H) After orders dated February 01, 2007 giving additional charge of Manager, GIP, Nilokheri to Shri Bodra were issued, although Shri Bodra looked after the work of Manager, GIP at Nilokheri, he had not formally taken over the charge of Manager, GIP at Nilokheri in the prescribed proforma. Even Shri Mehra had taken charge not from his predecessor (Shri Bodra) but from his Deputy Manager of the Press (Shri R.B. Suhag). Directorate of Printing may look into the practice of handing over/taking over charge formally as an administrative irregularity and take appropriate measures. **(Para 5.1.5(c))**

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(M) Appointments in April, 2008 in GOI Press Nilokheri have been made without any prior verification of character and antecedents of the selected candidates. GOI Press Nilokheri (Haryana) got the character and antecedents of the candidates verified in May/June, 2008, i.e. after a lapse of months after their appointment in March/April 2008. GIP Nilokheri did not take simultaneous action in March, 2008 for verification of character and antecedents during this period. There has been undue hurry and eagerness on the part of the Manager, GIP, Nilokheri to complete the entire process of recruitment in haste without following the prescribed norms and procedure relating to verification of character and antecedents. (Para 5.5.5)”

As may be seen, out of 44 candidates recommended for appointment 17 were against approved posts and 27 against unapproved posts. Of the 33 candidates appointed, 15 were against approved posts and 18 against unapproved posts. Like in the case of Mayapuri Press, the number of candidates who could have been actually appointed regularly was far less than the number appointed. The second irregularity was that the General Manager took over under questionable circumstances. Lastly, appointments were made without any prior verification of character and antecedents of the selected candidates, in GOI Press Nilokheri; the character and antecedents of the candidates were verified in May/June, 2008, i.e. after a lapse of month after the appointments in March/April 2008. These irregularities were sufficient for the Central Government to decide to scrap the entire selection in this Press.

25. The CVO's report for Aligarh (W.P.(C) 2001/2014, 3410/2014 & 3745/2014) in its relevant parts, reads as follows:

“3.7 Following conclusions can be drawn from the above:-

(a) The Ministry of Urban Development (Directorate of Printing) vide its office order No.20(5)/2002-A.III dated 18.05.2007 (**Annexure-L4**) had authorized/approved only 67 posts to be filled as Direct Recruitment vacancies/Essential vacancies. Out of this 14 posts were not advertised. **Against remaining 53 (67-14) posts, the Press advertised/notified 179 posts. The overall excess of posts advertised is 136 (179-53).**

**** The fourteen include Electrician-1, Steno-1, LDC-3 and Copyholder-5, Tech Officer-5, Wireman-2.**

(b) Approval of competent authority for advertisement of 136 excess vacancies as compared to 67 approved, in relaxation ban orders on direct recruitment has not been made available by the GIP Press, Aligarh/Directorate of Printing during the course of investigation.

(c) In total the Recruitment Board recommended 133 candidates for various post as indicated at **Annexure Q-3**. Out of that appointments were made in respect of only 58 (**Statement-A above**).

(d) There were 67 approved posts in 12 categories to be filled up by direct recruitment. Out of these, recruitments were not made against 50 posts belonging to the categories of Darkroom Assistant, Electrician, Labourer, Assistant Retoucher, Assistant Artist Retoucher, Cameramen, Stenographer, LD, Copyholder, Technical Officer, and Wireman. 49 recruitments were made against against the remaining 17 approved posts in Assistant Binder category. In addition 9 recruitments were made in the categories of Carpenter, Assistant Plate Maker, M/C Attendant Officer and M/C Assistant Offset even though no posts existed in these categories. As a result the total number of recruitment against unapproved posts was 41 (Assistant Binder-32, Carpenter-1, Assistant Plate Maker: 2, M/C Attendant Offset: 5, and M/C Assistant Offset: 1).

(e) Out of 133 candidates recommended for selection, seventy three persons (**Annexure Q-3**) were not allowed to join GIP Press at Aligarh (U.P. subsequent to suspension of Recruitment Process

on 03.04.2008 as per directive of Directorate of Printing. Two persons refused to accept offer/appointment at GIP, Press, Aligarh. Against the remaining advertised vacancies 46 (179-133), the Press did not appoint any person as no selection was made. The entire recruitment process was stayed by the Directorate of Printing on 3rd April 2008 on direction of the M/o of U.D., vide its letter dated 03.04.2008 (**Annexure-A**).

(f) Out of 133 candidates recommended for appointment (27**) recommendations were against approved posts and 106 against unapproved posts.

***Assistant Artist Retoucher-1, Labourer-9 & Assistant Binder-17 (as indicated in **Annexure-A & C** of letter dated 18.05.2007 – **Annexure L-4**)

“5.1 Specific instances of alleged irregularities:

**MANIPULATION IN THE SELECTION OF CANDIDATES
BY THE RECRUITMENT BOARD IN RESPECT OF
VARIOUS GROUP D POSTS.**

5.1.1 Reference number of Complaints in which allegation is made.

Annexure C-3(ii), C-4, C-6 and C-9.

5.1.2 Specific instances of alleged irregularities-

i) On 5th March, 2008, to rectify some technical error in the list finalized on 27.02.2008 on the basis of interview conducted between 22.02.2008 to 26.02.2008, another list was prepared for Safaiwala, Peon, Chowkidar, Labourer etc. **Lot of changes in the list were made** and inspite of great resistance by all the outside members the list was again changed and signed y all members while previous list was torn away by the Manager.

C-4

ii) The list of selected candidates finalized on 26.02.2008 by the Selection Committee on the basis of the interview conducted

between 20-25 February, 2008 was to be displayed on the notice board but it was not done. In the selection Committee meeting again convened on 05.03.2008, Manager stated that some names are to be changed in the list finalized on 26.02.2008 as per direction of the senior officers of Directorate of Printing. Thus, Manager cut some names in the list and **inserted another names in his own handwriting C-6 (iii)**

(iii) In the Selection Committee meeting again convened on 05.03.2008, Manager on the pretext of rectifying some technical error in the list finalized on 26.02.2008, Manager cut some names in the list and inserted another names in their place in his own handwriting. **C-9(ii)**

(iv) When complainant SC Member of the Selection Committee opposed the above action, he was removed from the Selection Committee in violation of rules. One minority member was also removed from the Selection Committee. **C-4**

(v) When the above action of the Manager was opposed by the Selection Committee member viz., Dr. Vishnu Swaroop and Dr. Naushad Ali Khan, they were removed from the Selection Committee by the Manager arbitrarily and in violation of rules. **C-6**

(vi) The candidates selected in final list issued on 30.03.2008 have been shown selected by the Selection Committee including two new members viz., Sh. Lal Singh and Dr. Rahim Ahmed Khan whereas the fact is that these two members of the Selection Committee had not interviewed the candidates during 22.02.2008 to 26.02.2008.

(vii) It has been observed from the final selection list displayed on the Notice Board on 31.03.2008 that a lot of manipulation from the candidates from first phase of Group-D interview have been noticed. The minutes did not bear the signature of two members of the Old Selection Board. **C-4**

(viii) No codal procedure was followed for selection. No marks were given to any candidates on which the new Board could have taken right decision for selection. **C-4**

(ix) The final list of the selected candidates issued on 30.03.2008 was not signed by Dr. Vishnu Swaroop and Dr. Naushad Ali Khan who were removed from the Selection Committee which conducted interview during 22-26.02.2008 which is not proper. **C-6**

(x) None of the applicant was selected on the basis of the interview conducted during 2nd spell for the post of Labourer. **C-3(ii)**

(xi) Except one applicant who is the son of Sh. Lal Singh, member of the Selection Committee, no other applicant was selected in the final selection list on the basis of the interview conducted on 28.03.2008 to 30.03.2008. **C-9**

5.1.3 (i) to (xi) Facts and their analysis

As per office Circular dated 30.03.2008 and Minutes attached thereto (Annexure-D), the interviews for the posts of Labourer were held on 22nd, 23rd and 24th February, 2008 and 28th and 30th March 2008. It is on record that on 5th March, 2008, another meeting was convened with a view to rectifying the technical error, the details of which were not provided (**Annexure-G**). The formal proceedings of the Meetings of Recruitment Board held on February 22-24th 2008 have not been made available during investigation. As such the technical errors that were stated to be rectified in the meeting of 05.03.2008 are not on record.

The final list of the selected candidates in **respect of LABOURER** post was declared on 30-03-2008 (**Annexure-D**). A total of 39 candidates were selected and 6 candidates as detailed in (**Annexure-D, Page 3**) were placed in the waiting list. This list of final selection of the candidates was signed by the following four officers, namely:-

(i) Shri B. Ghosh, Manager, Chairman (ii) Shri A.K. Chowdhry Member Secretary (iii) Shri G.K. Sharma, Member (iv) Dr. Abduraheem. K. Member (Minority). Sh. Lal Singh, Member (SC). As per the minutes of the meeting he has been shown as absent. As per the statement dated 22.10.2009 of Dr. Naushad Ali recorded during inquiry (**Annexure-L**) he attended the

proceedings of the Recruitment Board held on 22nd to 24th February, 2008 as a Minority Community Member.

As per the above list the interviews for the post of LABOURER were held in two spells, i.e. on February 22, 23 and 24, 2008 and 28th and 30th March, 2008.

*To ascertain veracity of the allegations the main complainant Shri Vinod Kumar working as Assistant Binder (Token No.570), in the press was contacted. He **informally handed over the unsigned original piece of paper (Annexure-C)** in support of his allegation bearing handwritten remarks and disclosing the names of various officials of the Press and the Directorate of Printing who reportedly recommended the names for selection in the labourer category of post. The handwriting on this piece of paper is alleged to be of the then Manager of the Press (Shri B. Ghosh, since retired). No record of the proceedings with respect to this document has been kept by the Press.*

*In this context the statement dated 24/20/2009 of Shri Vishnu Swaroop, Member SC of the Recruitment Board recorded – during enquiry is relevant which clearly indicated that the handwriting on this paper is of Shri B. Ghosh (Annexure-I). With a view to further verifying this aspect, hand written specimen have been obtained from the personal file of Shri Ghosh which are marked as **Annexure-F**. It has been observed that **prima facie** the handwriting on the above documents, i.e. **Annexure C and F** tallies with each other.*

The above facts reveal that the allegation of manipulation in preparation of the final list of the selected candidates is established.

The following observations also strongly support the above conclusion:-

*(a) The signatures of Dr. Swaroop, Member SC were not obtained in the final list prepared on 30-03-2008 (**Annexure-D**). He attended the meeting of the Recruitment Board as is evident from **Annexure-C (unsigned)** and other documents marked as **Annexure-G**. It is remarkable that the Members of the*

Recruitment Board finalized the list of selected candidates without any evaluation or assessment sheets. This acquires more significance as the final list was prepared after the interviews conducted in the second spell in March 2008 whereas the candidates selected were interviewed in the first spell in February 2008. The members of the Recruitment Board who have put their signatures on the final list of selected candidates should be held responsible.

(b) None of the candidates appeared in the second spell of interviews during 28th to 30th March 2008 was selected by the Recruitment Board.

(c) The names written in hand by way of cutting/overwriting as a result of manipulation more or less find place in the final list. The names indicated in this list which have been circled and alleged to have recommended the names of the candidates include that of (i) A.K. Chowdary, - A.M.(A), Minto Road and member of the Recruitment Board, (ii) Sinha (A.K. Sinha, G.M.), (iii) RC (RC Gupta, D.S.), (iv) L R (L R Gupta, DD) – All officials of the Directorate in Delhi during the recruitment process. However, authenticity of this document is not confirmed as it contains no signatures.

(d) As per the letter dated 25.3.2010 no records of the attendance during the first spell of interviews/tests held on 22, 23 and 24 Feb, 2007 has been maintained in the press.

Documents relied upon: - Annexure-C, D & F

5.1.4 Findings:-

The candidates appeared for interviews in respect of 'Labourers' category in two spells, first on 22, 23 and 24 February and second on 28th and 30th March, 2008. Neither a marking sheet nor signed recommendations by Members of the DPC which conducted the interviews from 22nd to 24th February 2008 were available. Subsequently, composition of the Committee was changed by replacing two Members which later conducted the interviews on

28th and 30th March, 2008. However, the final list of the selected candidates was prepared after the conclusion of the interviews in the second spell without a marking sheet or signed recommendations by the Committee which conducted the interviews in the first spell. It is not clear on what basis the Members of the Recruitment Board who have put their signatures on the final list of selected candidates have done so. The allegation of manipulation in the selection of candidates is, therefore, established on the basis of documentary evidence available on record. The Members of the Recruitment Board who have put their signatures on the final list of selected candidates should be held responsible.”

(ii) So far as the petitioner Manjeet Sharma is concerned, the report of CVO in para 5.7.3(i) is as follows:

“As per the advertisement in the Employment News dated the 10-16 November, 2007, the last date for submission of application for the post of Assistant Binder was 03.12.2008. As per the record of the Press one Shri Manjeet Sharma (Roll No.270) applied for the post on 21.11.2007 and the same was registered in the Press on 23.11.2007 as diary No.1884. On checking of the relevant papers of this candidate it is seen that the Provisional National Apprenticeship certificate issued by the Govt. of India Press, Ring Road, New Delhi is dated 13.12.2007, i.e. issued after the last date of receipt of application form. In other words, the application was not complete in all respects but was accepted and treated as eligible one. There is also an indication on the front page of the application that he is “NOT QUALIFIED” which was subsequently marked as OK on 09.01.2008 and duly signed by the officials of the press on the front portion of the application of the form.”

26. The above extracts clearly reveal that of the 133 candidates recommended for appointment, 27 recommendations were against approved posts (i.e Assistant Artist Retoucher-1, Labourer-9 and Assistant Binder-17) and 106 were against unapproved posts. Other infirmities, or deficiencies which had the tendency to fatally undermine the recruitment process were

that the signatures of a member of the selection board were not found on the recommendations; manipulations such as cutting, overwriting, etc were found in the select list, scoring out certain names and substituting them with others. Selections were conducted piecemeal; in such circumstances, the signatures of the members of the old selection board were not found on the select lists; marks were not assigned, etc.

27. The argument made by some of the selected candidates was that the infirmity in the selection process was confined to certain categories, such as Group D. A forceful plea was made that since there was a specific infirmity in respect of the time given for interviewing the candidates (which according to the CVO's report, pointed at sheer improbability if not downright impossibility, given the number of candidates interviewed during a limited time) was in respect of one Government Press and in relation to Group D posts, the absence of any mention in the report, as regards other categories, meant that the CAT erred in adopting a uniform approach and likewise, the respondents should have taken care to separate such other candidates. This court is of opinion that the defects in the selection process were so fundamental in nature that only one specific form- i.e interview time in respect of Group D candidates, in Mayapuri (and not other centers or in respect of other posts) would not have made a difference. Apart from that, the materials on record clearly showed more serious flaws: the total number of posts advertised was 91 as against the approval to fill 33 posts, otherwise than by direct recruitment. As many as 110 selections were made. There was no approval to fill 110 posts. Nor is the argument in respect of Group D candidates (who were interviewed and declared successful) that they were

interviewed in batches and made to perform practical duties to assess the suitability, by the Selection Panel, of any assistance. Likewise, as noticed in relation to the Aligarh and Nilokheri Presses (in view of the discussion previously in this judgment), the malaises were too fundamental to be disregarded.

28. The argument that since the petitioners were appointed and had functioned uninterruptedly for over five years or so had completed the maximum period stipulated for probation, they were entitled to be retained in service, unless formal disciplinary charges served and regular inquiries held, is, in this court's opinion, insubstantial. Such a rule again is not inflexible; it may possibly apply where there is no fault in the performance of the candidate, selected and appointed as a result of an otherwise valid process of recruitment. It cannot be invoked in a case, like the present one, where the selection on the basis of which the names of the candidates were selected is tainted by irregularities which strike at the root of the process itself. It is also impossible for the Government to separate the tainted candidates from un-tainted ones in the present case. The expiry of the statutory period of probation cannot act as a rule validating an otherwise indefensible selection process which should result in complete cancellation.

On this score, the CAT held as follows:

“Under these circumstances, based on the above citations, we conclude that till an order of confirmation is issued by the respondents it will be presumed that the period of probation of the applicants was extended and that they continued to remain as probationers. The argument of the applicants’ counsel that they be considered as deemed confirmed is not sustainable.”

Therefore, on this aspect, this Court does not find any infirmity with the findings of the CAT in the impugned order.

29. The CAT, in its impugned order held that:

“7.2 The second issue for our determination is whether the respondents have mechanically scrapped the selection process on the ground that the Hon’ble High Court had so ordered or whether they have actually examined the report of the CVO and come to the conclusion that scrapping of the selection was necessary. In this regard we have seen the original files of the respondents. We find that the report of the CVO has been examined in great details by the respondents as is evident from their notes starting from page-18 onwards in File No. C-13019/1/2011-Ptg. Before taking this decision they have also consulted the Ministry of Law who advised them that in the case of UOI Vs. Chakradhar (supra) the Hon’ble Supreme Court had in a similar situation held that the nature and extent of irregularities and illegalities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. The Hon’ble Supreme Court had further held that if the mischief noticed is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongly deprived of their selection then the only way out was to cancel the whole selection. The Ministry of Law further advised on the basis of the aforesaid citation that in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. After consulting the Ministry of law the matter was further examined in the department and the file was seen by concerned officers of the department as well as by the Hon’ble Ministers. Based on the report of the CVO as well as the advice of the Ministry of Law obtained the respondents decided to scrap the selection. In our opinion, this decision has been taken after application of mind by the respondents and not mechanically on the ground that Hon’ble High Court of Delhi had so ordered. Thus, the respondents cannot be faulted on this account.”

This Court is of the opinion that the infirmities and deficiencies found during the inquiry are fundamental in nature. The lack of authority to fill the number of posts that were ultimately filled; the manipulations in the selection process, the short time given for candidates to apply, the short time intimated for interview, the changes in the selection committees, lack of signatures on the select lists, etc point to deep rooted and fatal defects which rendered it beyond redemption.

30. In W.P.(C) 3745/2014 (directed against order in O.A. No. 579/2012 and O.A. No. 1554/2012), the Petitioner is aggrieved because the CAT upheld his termination on the ground of lack of qualification. It is urged before this Court, that CAT did not appreciate the Petitioner's rejoinder in which he produced documents to prove that the certificate submitted by him was genuine. The Petitioner's services were terminated by the order dated 31.10.2012 on the ground that the educational qualification certificate furnished by him was found to be fake on verification.

31. CAT relied on a DoP&T memorandum, O.M. No. 11012/7/91-Estt.(A) dated 19.05.1983, which states that a government servant who has furnished false information or relies upon a false certificate to secure appointment should not be retained in service. The respondents contended that before terminating this petitioner's appointment proper inspection was conducted to verify his certificates. A letter was written on 10.02.2012 to Gurukul Vishwavidyala Vrindavan to ascertain the genuineness of the certificate. The Vishwavidyala Vrindavan replied on 07.03.2012, to say that the certificates appear to be fake. Thereafter, another letter was written on 12.09.2012 to this Institute in order to carry out physical verification and

two officials namely Sh. Ram Dayal, Deputy Manager along with Sh. Raj Kumar, Accountant were deputed. They found that no record was available in the Institute as regards issuance of this certificate. The Institute again by their letter dated 28.09.2012 stated in writing that the certificate was a fake one. After considering the rival contentions, CAT held as follows:

“15. We have considered the submissions of both sides. We find that the applicant has not been able to adduce even iota of evidence to establish that his educational qualification certificate was genuine. On the other hand, we notice that the respondents have made every effort to verify the genuineness of this certificate. It was only after due diligence that they came to the conclusion that this certificate was false. They have, therefore, terminated the services of the applicants in accordance with the directions of DoP&T mentioned above. We do find that they have invoked the wrong rule, namely, 19(1) of CCS(CCA) Rules, 1965 for his termination. This rule reads as follows:-

“Whether any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge or....”

Clearly this rule has no application in the instant case as there is nothing on record to show that the applicant has been convicted in a criminal case. However, in our opinion, mere invoking wrong section or rule does not vitiate the termination, which is otherwise in order. As regards his contention that he was confirmed in service, we have already discussed this issue in earlier part of the judgment and rejected it.”

32. This Court is of opinion that no fault can be found with the order of CAT in respect of this case. The petitioner's plea that he has now annexed certain documents, is of no consequence. The appointing authority got the certificates shown to it by the petitioner, verified twice. The officials who

verified it, found that the document was not genuine. That the petitioner now alleges that he has documents to prove the genuineness of the certificate is of no consequence. When given the opportunity to do so, he did not avail it. For these reasons, the petition is unmerited.

33. For the foregoing reasons, this court concludes that the impugned orders of the CAT cannot be faulted. The writ petitions are accordingly, dismissed.

DECEMBER 24, 2014



**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**