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

Reserved on: 10.07.2014

Pronounced on : 23.07.2014

+ **W.P.(C) 3894/2014, C.M. NO.7848/2014**

SANTOSH PAL MEENA

..... Petitioner

versus

UPSC AND ORS.

..... Respondents

+ **W.P.(C) 3895/2014, C.M. NO.7850/2014**

SH. SUNIL KUMAR GAUR

..... Petitioner

versus

UPSC AND ORS.

..... Respondents

+ **W.P.(C) 3903/2014, C.M. NO.7865/2014**

SANJAY CHAWLA

..... Petitioner

versus

UPSC AND ORS.

..... Respondents\

+ **W.P.(C) 3904/2014, C.M. NO.7867/2014**

OM LATA SINGH

..... Petitioner

versus

UPSC AND ORS.

..... Respondents

+ **W.P.(C) 3905/2014, C.M. NO.7869/2014**

SH. RAJESH SHARMA AND ANR.

..... Petitioners

versus

UPSC AND ORS.

..... Respondents

- + **W.P.(C) 3924/2014, C.M. NO.7905/2014**
 SH. KULDEEP SINGH Petitioner
 versus
 UPSC AND ORS. Respondents
- + **W.P.(C) 3862/2014, C.M. NO.7800/2014**
 MAMTA YADAV AND ORS. Petitioners
 versus
 UPSC AND ORS. Respondents
- + **W.P.(C) 3876/2014, C.M. NO.7822/2014**
 HARISH KUMAR Petitioner
 versus
 UPSC AND ORS. Respondents

Through : Sh. Yashpal Rangi, Advocate, for
 petitioners in Item Nos. 2 and 3.

Sh. Ashish Nishchal, Advocate, for
 petitioners in Item Nos. 4, 5 and 6.

Sh. R.V. Nair, Advocate, for petitioner.

Dr. Monika Gusain with Sh. Hariom
 Yaduvanshi, Ms. Geeta Singh and Sh.
 Abhinav Jain, Advocates, for petitioner in
 Item No.7.

Sh. R.K. Saini with Sh. Sitab Ali
 Chaudhury, Advocate, for petitioner in Item
 No.13.

Sh. Naresh Kaushik with Ms. Aditi Gupta
 and Sh. Vardhmaan Kaushik, Advocates, for
 UPSC in all matters.

Ms. Zubeda Begum, Standing Counsel
 (GNCTD) with Ms. Sana Ansari, Advocate,
 for Resp. Nos. 2 and 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. This is a common judgment disposing of W.P (C) nos. 3894, 3895, 3903, 3904, 3905, 3924, 3862 & 3876/14. The petitioners are aggrieved by a common order dated 29.05.2014 of the Principal Bench of the Central Administrative Tribunal (CAT) rejecting their applications, in which they had challenged the decision of the respondents, the Government of NCT of Delhi (hereafter “GNCT”) and the Union Public Service Commission (hereafter “UPSC”) to treat them as ineligible for the post of Principal, Directorate of Education, GNCT (DOE). The GNCT had advertised 58 vacancies in the post of Principals in the GNCT managed schools; the eligibility conditions prescribed 10 years’ teaching experience and post-graduation. The respondents’ contention, upheld in the impugned order, was that reckonable experience for consideration to the post was 10 years’ service after post-graduation.

2. The UPSC issued an advertisement for appointment to the post of Principal in GNCT; the petitioners were serving as PGT/TGT in DOE, GNCT, and applied in response to the said advertisement. They were asked to appear in the written test held on 29.04.2013, which they did. The respondents declared the result of the test, by which 200 candidates including the Petitioners were declared successful and were declared eligible to appear in the interview for the 58 vacancies of Principal in DOE. A month later, the respondents issued another

additional list of 88 successful candidates in the written test. It was later, in September, 2013, that the respondents issued a letter intimating the date of interview and also issued admit cards. The petitioners were not, however issued admit cards; their names were also not included in the interview list. This led to their approaching the Central Administrative Tribunal (CAT).

3. The petitioners alleged that they fulfilled all eligibility criteria spelt out in the advertisement and in the Recruitment Rules and that as they had applied through proper channel, their experience was verified. Their experience had been counted by the respondents from the date of appointment as TGT/PGT in High School as well as Senior Secondary School. It was alleged that without calling for additional documents in support of their eligibility (i.e. qualification and experience) after the declaration of the result or before preparing the list of candidates for interview, the respondents could not have declared the applicants ineligible for interview, that too without passing any order. They claimed to have been informed orally that UPSC interpreted the experience condition in a different manner; however, they were in the dark as they had not received any communication in writing. It was also alleged that the certificates rendered with relation to experience relate to DOE and, therefore, could not be disputed. The petitioners alleged that the order refusing their candidature was illegal and arbitrary as well as in violation of principles of natural justice. It was submitted that in view of the advertisement, candidates had to possess 10 years' experience,

irrespective of date of acquiring Master Degree, and even the DOE, while issuing the experience certificate had taken into account the conditions mentioned in the advertisement. Based on these pleadings, the petitioners sought declaration that they were eligible for appointment to the post of Principal in DOE, Govt. of NCT of Delhi and a direction that they should be appointed to the said post.

4. The respondents stated that for shortlisting the number of candidates, a recruitment test was conducted on 29.04.2012 and that the petitioners who appeared in the said test, were declared successful in the aforesaid recruitment test. The respondents relied on Note 2 of the advertisement which stated that in the event of a large number of applicants responding to the aforesaid advertisement, since it would not be possible for the UPSC to interview all the candidates, it could at its discretion, restrict the number of candidates to a reasonable limit by any or more of the following methods:-

- (a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement; or
- (b) On the basis of experience in the relevant field;
- (c) By counting experience before or after the acquisition of essential qualifications; or
- (d) By holding screening test.

5. The respondents urged that the petitioners had not referred to Note 2 (c) relating to counting of experience before or after the acquisition of essential qualification. Since 3732 applications were received, a shortlisting criterion in the form of a recruitment test was

evolved for the purpose of limiting the number of candidates and this test was held on 29.04.2012. It was further decided that 10 years of teaching experience prescribed had to be reckoned after acquiring the essential educational qualifications as mentioned at Essential Qualification A (i) and A (ii) in the Advertisement. This was in accordance with Note 1 of the advertisement. The result of recruitment test was declared on 29.07.2013 and 200 candidates were declared successful, who were to be called for interview. Thereafter, on a preliminary scrutiny of documents and certificates furnished by the candidates along with their application forms, in accordance with the shortlisting criteria adopted by UPSC, it was found that many candidates did not meet the shortlisting criteria and, therefore, their candidature had to be cancelled. An additional result of 88 candidates was declared on 30.08.2013 and rejection letter intimating reasons were also sent to the concerned candidates on 04.09.2013. The final list of candidates to be called for interview was uploaded on 03.09.2013 on the website of UPSC. This did not contain the petitioners' names because they did not meet the shortlisting criteria, as none of them possessed the 10 years' experience in teaching in a High/Higher Secondary School or Intermediate College after having acquired the essential qualifications mentioned in the advertisement i.e. A(i) and A(ii) as mentioned above. Their candidature was as a result, cancelled and was communicated to them.

6. The CAT, during the pendency of the applications, by its order dated 10.09.2013, directed the respondents to permit the petitioners to

appear in the interview provisionally which was to commence on 16.09.2013; the results were to be declared subject to its further orders. Accordingly, the petitioners were interviewed provisionally. During pendency of the proceedings, on 26.04.2014, the petitioners' result was produced. The CAT, after looking into the results held that the applications of only those declared qualified, was to be considered and that the others were not entitled to any relief. The interim relief granted was also vacated.

7. By its impugned order, the CAT rejected the claims before it, observing that the UPSC had resorted to shortlisting criteria that were made known to the applicants beforehand. The relevant observations of the CAT in this regard are as follows:

“It thus appears from the above that as per Note II of the aforementioned advertisement, the discretion was available to the respondent-Commission which could have resorted to shortlisting by any or more of the prescribed methods. To that extent, the action of the respondent-Commission to resort to the aforementioned two methods of shortlisting namely, one by recruitment test and the other by counting educational experience before or after the acquisition of essential qualifications, cannot be faulted.

16. *The declaration of a list of 200 candidates as successful on 29.07.2013 who could be called for interview, is stated to have been cancelled on the ground that they did not meet the shortlisting criteria and, therefore, the respondent-Commission had to declare an additional list of 88 candidates on 30.08.2013. The decision of canceling the candidature of the candidates is stated to have been on the ground that they did not meet the shortlisting criteria of ten years teaching experience after acquiring the essential*

qualification. This being based on reasonable classification, no interference can be made.

17. In so far as the criteria for shortlisting is concerned, Note 2 of advertisement provides that if a large number of applications are received in response to advertisement and it would not be possible to interview all the candidates who had applied for the post, the Commission can, at their discretion restrict the number of candidates by adopting one or more methods prescribed in the advertisement. In view of the provision in Note II, the Commission adopted the same by cancelling the candidature of the applicants as they were short of 10 years teaching experience after acquiring the essential qualifications. The respondent-commission therefore adopted the second shortlisting criteria in declaring the additional list of 88 candidates for which the commission. We do not think that this falls within the scope of judicial review. What criteria is to be adopted and what not to be adopted is solely to be decided by expert bodies like the respondent-Commission and the Tribunal cannot interfere in determination of such criteria as long as it is a part of the notified advertisement inviting applications.

18. We would also clarify that the applicants were allowed to appear provisionally in the interview vide interim order dated 10.09.2013, and were shown as qualified as per the result produced by the respondent-Commission. Nevertheless, the appointments would have to be governed by the eligibility criteria laid down for selection to the aforementioned post. No relaxation in the eligibility conditions is permissible. If the applicants did not meet either of the two shortlisting criteria adopted by the respondent-UPSC, they cannot be allowed a different treatment from the others whose candidature have been cancelled because of aforementioned prescribed criteria.

19. The Honble Supreme Court in a similar matter of shortlisting of candidates in selection process namely M.P. Public Service Commission Vs. Navnit Kumar Potdar &

Anr. (JT (1994) 6 SC 302) had upheld the shortlisting of candidates on some rational and reasonable basis and for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Union Public Service Commission for calling candidates for interview....

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The action was upheld by the Honble Supreme Court as can be observed from the aforementioned extract. The procedure that was adopted in the selection process by the UPSC as per the terms of the advertisement for appointment of 58 posts are therefore legitimate in the light of the aforementioned decision of the Honble Supreme Court.

20. The applicants have challenged the provisions of advertisement inviting applications. These applicants, on the other hand, despite the aforementioned provisions to which they have now objected, such as regarding the Note for enabling one or more of the prescribed shortlisting criteria, have chosen to apply for the posts mentioned in that advertisement. Once having done so, as has been held by the Honble Apex Court, they are estopped from making any objection to the same.”

9. The Petitioners relied on the judgment of the Supreme Court in *Asha Sharma Vs. Chandigarh Administration* (2011) 10 SCC 86 to say that whenever both the decision making process and decision in this case are based on irrelevant considerations, by ignoring relevant considerations, such action is arbitrary and requires judicial intervention. It is also argued that when the Petitioners were declared eligible as well as suitable for appointment to the post of Principal, DOE in terms of the final result produced in the court, there could have been nothing further to be done, as the eligibility conditions vis-

à-vis the requirements mentioned in the advertisement were met with. It was also stated that in terms of Recruitment Rules, there was no requirement to possess an experience of ten years after acquiring the eligibility qualification of IInd Class Masters Degree from a recognized University. Learned counsel argued that once one of the suitable methods for shortlisting i.e. written test was resorted to and thereafter final result was declared; a list was prepared for interview. There was and could have been no further requirement to a second shortlisting on the basis of experience *after* acquiring the educational qualification. It was urged that no document was produced by the respondents to show that such decision of resorting to shortlisting for the second time was justified by rules or regulations. This being the case, the selection criteria could not have been changed after declaration of the result and the action of the respondents was contrary to the law laid down by the Supreme Court in *Himani Malhotra Vs. High Court of Delhi* (2008) 7 SCC 11 and *K.Manjushree Vs. State of Andhra Pradesh* (2008) 3 SCC 512. Neither was any reason communicated nor was any order passed after having declared the result on 29.07.2013 and after having found the applicants fit to be called for interview, no material was tendered by the respondents to declare the Petitioners ineligible. Moreover, the exercise of discretion for treating them as lacking in qualification was neither relevant nor permissible under the prescribed recruitment criteria. This plea of a second list of shortlisting criteria was raised by the respondents for the first time in the counter affidavit filed before the Tribunal.

10. Counsel for the second and third respondents, the Secretary Education and the Directorate of Education, GNCT, Ms. Zubeda Begum and the counsel for the first respondent UPSC, Mr. Naresh Kaushik argued that the modality adopted by the UPSC in the selection process for 58 posts of Principal, DOE was within the powers of the Commission; it was competent to devise independent modes of functioning and procedures objectively. As long as reasonable classification of various applicants was adopted, one of them being based on their qualification and experience, there could be no charge of arbitrariness. This power of the Commission of reasonable classification, it was argued has been upheld by various judicial Authorities, including the Supreme Court. Reliance was placed on *M.P. Public Service Commission vs. Navnit Kumar Potdar & Anr* JT (1994) 6 SC 302, where the action of shortlisting candidates, on rational and reasonable basis was upheld. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the UPSC for calling candidates for an interview. This was upheld by this Court. Likewise *Govt. of A.P. vs. P. Dilip Kumar & Anr* JT (1993) 2 SC 138 too was relied on, to say that it is open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection, by prescribing higher eligibility qualification so that the field of selection can be narrowed down, with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure adopted by the Commission in the present case was therefore, legitimate.

11. The advertisement published by the UPSC in this case, inviting applications for 58 posts of Principal in DOE, GNCT is in the following terms:-

“A. Educational: At least second class Masters degree from a recognized university or Equivalent Degree in teaching/Education from a recognized university or equivalent.

B. Experience: 10 years experience of teaching in a High or Higher secondary School or an intermediate college.

C. Desirable: Experience in administrative charge of a recognized high/higher secondary School/intermediate college.

Doctorate degree

Public School Experience.”

12. It would also be necessary at this stage to extract relevant portions of the Recruitment Rules, framed under proviso to Article 309 of the Constitution of India:

“...Recruitment Rules for the post of Principal and others vide notification F.2 (6)/70-S.II Part, dated 20.04.1977

1.	Name of the Post	<i>i) Principal Govt. Sr. Sec. School ii) Principal Teachers Training Institute iii) Deputy Education Officer iv) Plan Evaluation Officer v) Lecturer, State Institute of Education vi) Research Officer, (Patrachar) vii) Senior School Inspector Note: Male or female candidates</i>
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		<i>will be considered for appointment to the post meant for such candidates only.</i>
2.	<i>No. of posts</i>	<i>670(Principal's) 35,(D.E.O.) (and others subject to variation dependent on work load)</i>
3.	<i>Classification</i>	<i>General Central Service Group-A Gazetted</i>
4.	<i>Scale of Pay</i>	<i>Rs. 700-1100(Pre-revised) or Rs. 10,000-15,200 (Revised as per V.C.P.C)</i>
5.	<i>Whether selection post or non-selection</i>	<i>Selection post</i>
6.	<i>Age limit for direct recruits</i>	<i>No exceeding 45 years (Relaxable for Govt. servant) Note: The crucial date for determining the age limit has to be the closing for receipt of application from candidates (Other than those in Andaman and Nicobar islands and Lakshadweep)</i>
7.	<i>Educational and other Qualifications required for direct recruits</i>	<i>Essential (i) At least IIInd Class Masters Degree From a recognised University or equivalent. (ii) Degree in teaching Education from a recognised University or equivalent (iii) 10 years experience of</i>

		<i>teaching in a High or Hr. Sec. School or an intermediate College.</i> <i>(Qualifications relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified; in particular, the qualification regarding experience is relaxable in case candidates belonging Tribes for the posts reserved for them)</i>
8.	<i>Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotion</i>	<i>No.</i>
9.	<i>Period of probation if any,</i>	<i>Two years</i>
10.	<i>Method of recruitment whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods</i>	<i>50% Promotion failing which by direct recruitment 50% by direct recruitment</i>
8.	<i>In case of rectt. by Promotion/ deputation/transfer,</i>	I. Promotion <i>(i) Vice Principal, Govt. Higher Sec. School</i>

	grades from which promotion/ deputation/ transfer to be made	(ii) Vice Principal, Teachers training Institute (iii) Headmaster, Govt. Adult (Evening) Schools with 5 years regular service in the respective grade. II. Failing (i) above, 10 years combined regular service in posts in group 'A' & Group 'B' below: (i) Vice Principal, Govt. Higher Sec. School (ii) Vice Principal, Teachers Training Institute (iii) Headmaster, Govt. Adult (Evening) School (iv) Post - Graduate Teachers (Special Cadre) and Head Masters, Middle Schools. (v) Post Graduate Teachers (Administrative Cadre) (vi) Asst. Social Education Officer (vii) Asst. District Inspector of Schools III. Failing (i) and (ii) above (i) Post Graduate Teachers (Special Cadre) and Head Masters, Middle Schools. (ii) Post Graduate Teachers (Administrative cadre) (iii) Asst. District Inspector of Schools. (iv) Asst. Social Education Officer with 10 years regular
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		<i>service in the respective grade</i> <i>Note : The promotion quota for promotion to the post of principal etc., from post graduate teachers (Special Cadre) and Headmasters, Middle School vis-a-vis Post Graduate Teachers (Administration cadre) will be fixed proportionately as calculated on the last day of the last academic session.</i>
	<i>If DPC exists, what is its composition</i>	<i>Group 'A' DPC</i> <i>1. Chief Secretary, Delhi Govt. - Chairman.</i> <i>2. Education Secretary - Member</i>
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13. The advertisement, under “Instructions and Additional Information to Candidates for Recruitment by Selection”, provided, by Note I that the prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview. Note II provided that where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission at their discretion may restrict the number of candidates, to a reasonable limit by any or more of the following methods:

“(a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement; or

(b) On the basis of experience in the relevant field;

(c) By counting experience before or after the acquisition of essential qualifications; or

By holding screening test.”

14. Note II, no doubt, clothed UPSC with the discretion to create a shortlist by any or more of the methods spelt out. The CAT did not fault its decision saying that two methods of shortlisting namely were resorted to, one by recruitment test and the other by counting educational experience before or after the acquisition of essential qualifications. The question is whether, having held the screening or written test, as in this case, a further, second “screening” process was permissible. Whilst the CAT’s decision – holding that a screening methodology to shortlist or eliminate a large number of other wise eligible candidates can be adopted provided it is reasonable and not contrary to rules – is faultless, its sanction to the second screening (or, more appropriately sieving out) process is not beyond criticism. In this context, it would be appropriate to notice the decision of the Supreme Court in *B. Ramakichenin Alias Balagandhi v. Union of India & Ors.*, (2008) 1 SCC 362. The controversy there was whether prescribed experience, spelt out in the Rules should be acquired after securing the essential educational qualification, or is it sufficient if the candidate possessed it at the stage of applying for the post. The relevant discussion is as follows:

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5. The appellant states that he was fully qualified for the post, but he was not called for the interview although similarly placed candidates had been so called.

6. In this connection it may be mentioned that in the advertisement for the post issued by UPSC, essential qualifications mentioned therein were as follows:

"Essential ;

A. Educational; MSc degree in Agriculture from a recognised University or institution.

B. Experience : Two years experience in extension work/soil/ input analysis"

There was no mention in the advertisement that the experience of two years must be after obtaining MSc. degree.

7. It appears that UPSC resorted to shortlisting and did not call the appellant for the interview because he did not have two years experience in extension work/soil/input analysis after obtaining MSc degree in Agriculture. He no doubt had the requisite experience, but that was obtained before he got his MSc degree. UPSC called only those candidates for interview who had got the experience after getting the degree.

8. The appellant was of the view that there was no requirement that the two years experience should be after obtaining the master's degree in Agriculture. The appellant undoubtedly had such experience before obtaining his MSc. degree in Agriculture.

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it was open to UPSC to do shortlisting by stating that it will call only those who have PhD degree in Agriculture (although the essential degree was only MSc degree in Agriculture) Similarly, UPSC could have said that it would only call for interview those candidates who have, say, five years experience, although the essential requirement was only two years experience. However, experience after getting MSc. degree cannot be said to be higher

than the experience before getting MSc degree. Also, the advertisement dated 23.05.1998 does not mention that two years experience must be after getting MSc. degree.

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23. Had para 3.1 not been in the advertisement of UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to UPSC to resort to any rational method of shortlisting of its choosing (provided it was fair and objective) However, in the present case, a particular manner of shortlisting has been prescribed in para 3.1. Hence, it is not open to UPSC to resort to any other method of shortlisting even if such other method can be said to be fair and objective.

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It would be worthwhile again noticing the essential eligibility conditions for the post, in terms of the recruitment rules, in the present case:

“(i)At least IInd Class Masters Degree from a recognised University or equivalent.

(i) Degree in teaching Education from a recognised University or equivalent

(ii) 10 years experience of teaching in a High or Hr. Sec. School or an intermediate College.

(Qualifications relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified; in particular, the qualification regarding experience is relaxable in case candidates belonging Tribes for the post of reserved for them).(sic)”

15. It is thus clear that what is essential is aggregate ten years’ teaching experience, along with at least a second class masters’ degree

with a degree in teaching education from a recognized University. Furthermore, UPSC itself has the power to relax *even* experience requirements. In these circumstances, the respondents' contentions that the educational qualification of masters together with ten years' teaching in the relevant institution, after acquiring the masters' degree, is not borne out, textually, or by implication. In the present case, this interpretation has led to a mischievous result, in that several candidates, who qualified in the written test, were deemed not entitled to consideration and a list of 88 candidates, (who had not otherwise fared as well as these, including the petitioners), was published in an attempt to have them appointed. This procedure, through an interpretation, which is unfounded, has ousted the petitioners' candidature in an utterly arbitrary manner. Further, the impugned order of the CAT cannot also be upheld because having once adopted a shortlisting procedure, through a non-discriminatory rule of written screening test, the second screening – based on a note which seeks to go beyond rules that have the force of law- was clearly impermissible.

16. For the foregoing reasons, the impugned order of the CAT cannot be sustained; the respondents are directed to process the application and candidature of the petitioners on the basis that the rules only require 10 years' experience in the prescribed institutions, along with second class masters' degree and a degree in education – both from recognized Universities. The process of verification of such qualification and experience shall be completed in their case, within six weeks from today; they shall be intimated about the result of such

verification independently by that period. The writ petitions are allowed in the above terms without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

JULY 23, 2014

