

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No. 1825 of 2010 (O&M)
Date of Decision: March 29, 2016**

Surender Singh Taxak

...Petitioner

Versus

Food Corporation of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Arun Gupta, Advocate,
for the petitioner.

Mr. Rajesh Garg, Senior Advocate, with
Mr. Sundeep Kumar, Advocate,
for Food Corporation of India (Respondents No.1 and 2).

Mr. Rajiv Partap Atma Ram, Senior Advocate, with
Mr. Arjun Partap Atma Ram, Advocate,
for respondents No. 3, 5 and 6.

Mr. G.S. Bal, Senior Advocate, with
Mr. Mohan Singla, Advocate,
for respondent No. 8.

Mr. Mukesh Kumar Verma, Advocate,
for respondent No. 9.

Mr. Krishan Vohra, Advocate, for
Mr. Sumeet Goel, Advocate,
for respondent No. 11, CBI.

Amol Rattan Singh, J.

The petitioner seeks a writ of certiorari quashing the selection
and appointment of respondents No. 3 to 10 to the advertised posts of Deputy
General Manager (General Administration) in the respondent-Food

Corporation of India (hereinafter referred to as the 'Corporation'), stating that he has been deliberately denied appointment on the said post, despite being placed at the fourth position in the written test held, amongst the 181 candidates who appeared in that test.

Naturally, he seeks the consequential relief of appointment to the said post.

2. The petitioner, at the time of filing of the petition in the year 2010, is stated to have been working as an Assistant General Manager (General) in the Corporation, posted at Panchkula on 05.11.2008, prior to which he was working as an Area Manager at Rohtak.

3. The Corporation advertised various posts, including that of Deputy General Manager (General Administration). A total of four vacancies in the unreserved category were advertised for the said post, vide an advertisement dated 05.11.2008 (Annexure P-1). The petitioner is stated to have applied on 30.7.2008, through proper channel, with the required fee, with the application having been duly forwarded by his office, at the required address, which was Post Box No. 3076, Lodhi Road, New Delhi, as per the advertisement.

4. The written test was to be conducted on 09.11.2008. When the petitioner learnt that other eligible candidates had received an 'admit card', which he had not received, he checked from the website and found that his candidature was not listed there.

Consequently, he filed Civil Writ Petition No. 19088 of 2008 before this Court, seeking a direction to allow him to appear in the written test on the basis of his duly filled in application form, forwarded through the proper channel.

An interim direction was issued by this Court in that writ petition, allowing the petitioner to appear in the said examination, vide order dated 07.11.2008. He was also directed to deposit Rs. 20,000/- in the registry of this Court, with the condition of forfeiture, in case the averments made in the petition were found to be incorrect.

More importantly, it was directed that the result of the petitioner be not declared without prior permission of this Court.

5. The result of the written test is stated to have been declared on the internet on 28.01.2009 and the candidates who had qualified for group discussion were short-listed and were advised to appear for the same. The petitioners' roll number not appearing in the said list, it is stated in the petition, that he being under a *bona fide* impression of not having qualified the test, informed his counsel, accordingly.

Consequently, a statement was made before this Court in CWP No. 19088 of 2008, on 26.03.2009, to the effect that the writ petition be permitted to be withdrawn.

While allowing such withdrawal, a detailed order was passed by this Court, giving the background of the matter, noticing the earlier order requiring the petitioner to deposit Rs. 20,000/= and further noticing that no written statement had been filed by the respondents.

Therefore, while allowing the petitioner to withdraw the writ petition, on the ground that his counsel had stated that he had failed in the test, the amount of Rs. 20,000/- was also directed to be refunded, without any comment on the averments made by the petitioner in the writ petition. That order, dated 26.03.2009, is reproduced hereunder:-

“The petitioner, who is working as Assistant General Manager

in the Regional Officer of Food Corporation of India, Panchkula, has filed this petition for issuing direction to the respondents to permit the petitioner to appear in the written test to be held on 9.11.2008 for appointment to the post of Deputy General Manager (General Administration), claiming that he was eligible to appear in the said test, but was illegally not permitted to do so.

While issuing notice of motion by the interim order, the petitioner was permitted to appear in the said examination, subject to depositing Rs.20,000/- in the Registry of this Court and in case the averments made by the petitioner were found to be false, the amount deposited by the petitioner shall be forfeited to the Haryana State Legal Services Authority. No written statement has been filed by the respondents.

Counsel for the petitioner states that the petitioner has failed in the said test as the selected candidate has been appointed. Therefore, he prays that he may be permitted to withdraw this petition. He further prays that the amount of Rs.20,000/- deposited by the petitioner be directed to be refunded to him. Since no written statement has been filed, without considering the aspect whether the averments made by the petitioner are false or not, I permit the petitioner to withdraw the petition and direct the Registry of this Court to refund the amount of Rs.20,000/-, which was deposited by the petitioner on November 7, 2008.”

6. Before that, the petitioner had filed an application under the Right to Information Act, 2005, on 29.01.2009, seeking details of the marks secured by him in the written test.

On 11.06.2009, he was informed that he had secured 63.75 marks out of 120, in the written test held on 09.11.2008. He was also informed that the cut off mark, for being called to the next stage of the selection process, in the unreserved category of candidates, was 57.70.

The petitioner, thereafter, submitted a representation dated 01.07.2009 to the respondents, for taking appropriate action in the matter of his appointment to the post in question.

7. Having come to know that he had secured the fourth position out of 181 successful candidates in the written test, he also filed an application in this Court, in CWP No. 19088 of 2008, praying that the order dated 26.03.2009 be modified and he be allowed to withdraw the statement made on his behalf, with regard to having failed the test.

That application was dismissed by this Court on 25.08.2009, holding that there was no ground to modify the order, as it would be open to the petitioner to challenge the selection in accordance with law and that the statement made by his counsel would not come in his way. The said order is reproduced below:-

“CM no.13271 of 2009

Application is allowed.

The filing of certified copies of Annexures P-1 to P-3 is exempted.

CM no.13272 of 2009

The petitioner has filed this application for modification of the order dated March 26, 2009.

It is case of the applicant-petitioner under a wrong impression, counsel for the petitioner made statement that the petitioner has not cleared the examination, but as a fact the petitioner has cleared the examination by securing 63.75 out of 120 marks. In the application, it has not been disclosed as to who has been selected in the impugned selection or that any person less meritorious than the petitioner has been selected. In view of this, I do not find any ground to modify the order dated March 26, 2009.

Application is, accordingly dismissed. However, it will be

open for the petitioner to challenge the selection in accordance with law and the statement made by the counsel for the petitioner in this case will not come in the way of the petitioner.”

Consequently, the present petition was filed on 01.02.2010, challenging the selection and appointment of respondents No. 3 to 10, to the posts in question.

8. It has been stated in the petition that the respondents, knowing fully well that the petitioner had qualified the written examination, were dutibound to seek permission of this Court to declare his result along with others, rather than simply declaring the result of the others, without informing this Court.

9. The petition further states that the selection for the post of Deputy General Manager (General Administration) is a three stage process, consisting of the written test, a group discussion of those successful therein and finally, a personal interview.

It has further been contended that the respondents adopted a peculiar procedure in rationalizing the marks obtained in the written test, inasmuch as those who had secured 62 marks out of 120, were awarded only 36.17 marks and (similarly), candidates who had secured 60.75 marks were awarded 35.44 marks.

According to the petitioner, this amounts to “a rationalization of 70%”.

It is further contended that in this manner, selected candidates are put to a disadvantageous position, as their inter-se margin of marks has been minimized for comparison with each other.

On the other hand, the marks assigned in the group discussion and interview were not rationalized in this manner, but were simply added up as they were obtained, thereby giving too much leverage to the respondents to select their own favorites.

As a matter of fact, it is still further contended, that no such rationalization was required, and correctly, simply the marks obtained in each part of the selection process should have been totalled up.

The petitioner has also referred to the “Supreme Court directions”, to the effect that not more than 15% marks should be assigned for an interview, whereas in the present case, the interview component carried 20% marks, with only 10% marks for group discussion, after the aforesaid 'rationalization of written marks’.

10. Yet further, it is contended that as per the information received by the petitioner, again under the RTI Act, the criteria for selection to the posts in question, was formulated much after the receipt of application forms and conducting of the written test.

A letter, dated 17.12.2008, by which the guidelines for preparation of results of the written examination, written by the Deputy General Manager (RP), to the Director-CMS All India Management Association, has been annexed with the petition as Annexure P-8.

At that time, the weightage of marks was fixed to be 70% for the written test, 20% for the group discussion and 10% for the interview. The decision to that effect, dated 22.12.2008, has also been annexed by the petitioner as Annexure P-9, a perusal of which reveals that it states that the same criteria was adopted even in the previous recruitment.

11. However, thereafter, vide a decision dated 23.12.2008, signed by

the Deputy General Manager (RPI), the earlier decision was changed and the percentage of marks to be assigned to the personal interview was increased to 20% and for the group discussion, it was reduced to 10%.

Thus, it is specifically pointed out in the petition, that though the last date of receipt of the application forms was 25.08.2008, the criteria was finalized on 23.12.2008 (even after the written test was held).

12. Therefore, the petitioner has challenged the selection of respondents No.3 to 10 essentially on four grounds:-

- i) that despite his having qualified the written test, his result was not declared as it should have been, after taking permission from this Court, despite the fact that he had secured the 4th position in the written test;
- ii) that the criteria for selection was finally determined well after (4 months after) the last date for receipt of application forms and even after the written exam had already been held two weeks earlier; and that 20% marks were assigned for the interview, instead of the 10% earlier decided upon, with malafide intention to favour some candidates;
- iii) that the so called rationalization of marks in the written test, whereby the marks were reduced to almost half the marks actually obtained, is bad; to which the marks obtained in the group discussion and the personal interview were simply added as they were, which was again a method to gain leverage to select favourites.

Thus, subjective awarding of marks (in the group discussion and interview) was given higher leverage, to overcome the objective criteria (in the written test); and

- iv) that the selection process is, therefore, fraught with malafides.

13. In the reply filed by the respondent-Corporation, preliminary objections have been raised with regard to delay in filing the petition, with

the selection process having been completed in April 2009 and the selected candidates having also completed their probation period, in the meanwhile.

It has been further stated that while withdrawing the earlier writ petition (CWP No.19088 of 2008) on 26.03.2009, the petitioner did not make any efforts to determine as to whether he was successful in the written examination or not. Hence, he is precluded from challenging the selection subsequently.

It is further contended that the petitioner having participated in the selection process pursuant to the interim orders of this Court dated 07.11.2008 (in the earlier writ petition), he cannot now turn around to challenge the process, even in terms of Order 23 Rule 1 of the Code of Civil Procedure, 1973.

14. On merits, the factual position with regard to dates etc. having been admitted, it is stated that as per Clause 12 of the General Information and Instructions, given in the advertisement for the posts, it was stated that applications not in the prescribed proforma, or incomplete in any respect, would be summarily rejected and that care should be exercised by the departmental candidates to forward their applications to the authorities concerned, through proper channel, within the stipulated date.

Therefore, the application of the petitioner not having reached on time, he was not sent out any call for the written test, but was allowed to appear pursuant to the interim order of this Court (in the previous writ petition), even though no application, nor the requisite fee, was ever received.

It is further stated that the petitioner was allowed to appear in the examination only provisionally and there were no further orders of this Court for declaring his result; therefore, it was not declared, in terms of the interim

order already passed and, as such, it was the petitioners' fault that he chose to withdraw the petition.

However, in any case, since the petitioner did not have a right to appear in the examination itself, without the requisite fee and application form itself having been received, the question of his being considered for the post in question did not arise (the previous writ petition not having been adjudicated upon).

15. With regard to the contention of the petitioner on the examination process, it is stated in the reply that the process is undertaken by the All India Management Association, i.e. a recruitment agency appointed by the Corporation for the purpose, and that candidates from various Government organizations were to send their applications through proper channel, through their employers, to be forwarded by ordinary post to the post box number of the recruiting agency.

It is also stated that there was no provision for taking a fresh application from any candidates for any reason, including by reason of non-receipt of application forms or non-issuance of admittance cards, in view of the fact that such a provision is likely to be misused.

16. On the weightage/rationalization of 70% in the written test, it has been stated that the said process has always been a feature in the recruitment process of the Corporation, though the specific weightage is decided in each selection process differently. It is also stated that the weightage system is not disadvantageous to the candidates, because it is assigned for all candidates, whether they are selected or not selected.

The written statement further contends that as regards the process of selection, the petitioners' own selection, to his initial post, was also

by the same process of weightage of marks.

Still further, assigning of 10% and 20% marks respectively, to the group discussion and interview, is stated to be on account of the fact that the maximum marks for each of these two processes, were 10 and 20 respectively.

17. With regard to the change of criteria, it is stated that the petitioner has tried to mislead the Court by stating that the guidelines dated 17.12.2008 were changed, whereas actually the weightage was decided by the competent authority, i.e. the Chairman and Managing Director, only on 24.12.2008 and that the final selection process was sent to the recruiting agency thereafter, on 30.12.2008.

18. The written statement filed on behalf of respondents No. 3, 5, 6 and 9 states that the petitioners' attempt to "implicate the answering respondents" is only by way of 'pressurizing' for his personal gains.

It is elaborated in this reply that respondents No.3, 5 and 6 have successfully completed their probation period and respondent No.9 is on the verge of completing it (as on the date of filing of the reply dated 06.12.2010).

Other than that, in essence, the same stand has been taken by these respondents, i.e. some of the selected candidates, as has been taken by the Corporation itself.

19. Respondent No.8 has filed a separate reply stating that she has been selected against one of the posts reserved for scheduled caste candidates, and since the petitioner belongs to the general category, he has no locus-standi to challenge her selection, especially as she had already joined her post on 03.07.2009.

Other than that, nothing significant has been stated in the written

statement of this respondent, except that the process adopted for selection was good and proper.

20. The respondent Central Bureau of Investigation has also filed its reply, with regard to the enquiry conducted, on the allegation that one Debasish Mishra, Deputy General Manager (RPI), and G.Kartikeyan, an Assistant General Manager, had manipulated the policies and recruitment in the Corporation, specifically for the post of Deputy General Manager, by considering G.Kartikeyan as an OBC candidate of the non-creamy layer, rather than of the creamy layer.

It is stated in the written statement that a preliminary enquiry was conducted in the year 2008 and the allegation was found to be correct and as such, G.Kartikeyan should have actually been considered as “an Un-Reserved candidate”.

21. The written statement further goes on to state that, as a matter of fact, it was found that the criteria for change of percentage of marks for the group discussion and interview, was made on the basis of the note of the aforesaid Debasish Mishra, dated 23.12.2008, and that the ratio of candidates called for the written examination and interview, on the basis of the written test, was also changed from 3 candidates per post to 5 candidates per post.

G.Kartikeyan was 11th in the merit list after the written examination and since only 4 posts for unreserved candidates were to be filled, he would have been eligible to be called for interview, even if the ratio was kept at 1 is to 3. Hence, he did not derive any benefit from the change of ratio. Further, as he was awarded only 6 marks in the group discussion and 5 marks in the interview, he did not benefit from the change of criteria and eventually was not selected for the post of DGM.

However, Debasish Mishra had recommended the change of weightage and ratio, after the selection process had started, and had a role in considering G.Kartikeyans' candidature in the non-creamy layer of OBCs, even though he belonged to the creamy layer.

22. The reply further goes on to say that the change of weightage at this stage affected same candidates who had secured good marks in the written examination, as a result of which toppers of the written test could not come into the final merit list, having secured less marks in the group discussion and interview, whereas those who had secured lesser marks were granted more marks in the group discussion and written test and thereby made it to the final merit list.

Finally, the reply goes on to say that since there was no proof of malafides, the preliminary enquiry was closed and sent to the Chief Vigilance Officer of the Corporation, for taking action as the Corporation deemed fit.

23. In the replication filed by the petitioner, to the written statement filed on behalf of respondents No.1 and 2, it is stated that the entire selection process is marred by "legal deficiencies". In this regard, the petitioner has cited the cases of various candidates whose candidature was found to be illegal. The first of these is G.Kartikeyan, against whose candidature as an OBC (non-creamy layer) candidate a complaint was made by one Sudesh Kumar Yadav, which was found to be correct. Thereafter, Yadav was himself selected, after investigation of his allegation.

It has further been stated that the committee formed by the Chairman and Managing Director of the Corporation, consisting of two General Managers, recommended action against the recruitment division and as such, as per the petitioner, the entire selection process becomes doubtful,

especially as the said report was accepted and was forwarded for follow-up action, pursuant to which the matter was under consideration of the vigilance division of the Corporation. A copy of the report has also been annexed with the replication.

24. It is further contended in the replication that there were widespread allegations of mal-practices in the recruitment process and a number of cases were filed before various High Courts.

It is also contended that directions were given by the Ministry concerned (in the Central Government) to the respondent Corporation and its Chief Vigilance Officer, to investigate the allegations.

25. In reply to the preliminary objections, it has been stated that the petitioner could not have exercised more vigilance than he did, with regard to the outcome of the written examination, because he applied under the RTI Act with regard to his result in the written test, on 20.01.2009 itself and thereafter on 29.01.2009, and eventually he had to file an appeal under that Act on 12.05.2009, after which he received the information on 11.06.2009. Thereupon, he represented on 01.07.2009 and on 30.09.2009, for consideration of his candidature, but with no result.

It is further contended that, in fact, the Corporation had deliberately hidden the fact that the petitioner had actually passed the examination, even when the petitioner withdrew his writ petition (CWP No.19088 of 2008), saying that he had failed the test. (Learned senior counsel, Mr. Puneet Bali, during arguments, pointed out that the said order was passed in the presence of counsel for the respondent Corporation).

26. As regards the application of the petitioner not reaching the proper destination, it is submitted in the replication, that the Corporation has

deliberately hidden the fact that the petitioners' application was forwarded through proper channel to Post Box No.3076, Lodhi Road, New Delhi, on 07.08.2008, by the Regional Office of the Corporation itself at Panchkula. In support of this, a letter addressed to the counsel for the Corporation, by the Assistant General Manager, dated 20.03.2009, has been annexed as Annexure P-12 with the replication, in which it is stated that the application was forwarded on the aforesaid date but the recruiting agency had not received the same, alongwith the requisite demand draft.

A copy of the despatch register, showing despatch of a letter to the afore-described post box, has also been annexed with the replication.

In fact, it is contended in the replication that the fact of the petitioner having passed the examination, not having been disclosed to this Court (on 26.03.2009), amounted to contempt of Court.

27. It has further been pointed out from a noting sheet of the Corporation (Annexure P-14), that though the recruiting agency had confirmed that no application and fee was ever received from the petitioner, the petitioner had actually submitted the application with the fee on 31.07.2008, for onward submission through proper channel and it was actually so forwarded and this fact (the noting states) should be conveyed to the counsel for the Corporation, so that it was duly reflected the written statement (to be filed to the earlier writ petition), so that the facts were not kept hidden.

Thereafter, the next noting is to the effect that the reply should state in the preliminary objections that the petitioner was provisionally/conditionally allowed to appear in the written examination and eventually he chose to withdraw the (earlier) writ petition and that his

application did not reach the recruiting agency.

Thus, it is contended that despite earlier advice being given to project the stand as it was, in the written statement, thereafter, facts were withheld, amounting to deliberate concealment.

Hence, it is contended that the stand taken by the Corporation in its reply, that the petitioner was barred from filing the present writ petition, is without any legal basis, on account of the aforesaid facts, as also because the petitioner has challenged the selection process itself, which was a liberty given to him even while his application moved on 25.08.2009, in CWP No.19088 of 2008, seeking recalling of the order dated 26.03.2009, was dismissed.

28. The replication further states that the final result, after conducting group discussion and interview, was declared on 24.03.2009, as admitted by the Corporation on 04.08.2010, in reply to information sought by some other person in that regard, under the RTI Act.

Thus, with the writ petition having been withdrawn after declaration of the final result (on 26.03.2009) and the petitioner thereafter having been informed only on 11.06.2009, that he had cleared the written examination, the delay in filing the present writ petition, was not his fault.

At the time of arguments, Mr. Bali further submitted that this was especially so, as the petitioner had first filed an application in CWP No.19088 of 2008, seeking recalling of the order dated 26.03.2009.

29. As regards the contention of the Corporation, that the criteria of proportionate reduction of marks in the written test does not affect the candidates, it being common to all, it is submitted (by giving a concrete example in respect of marks awarded), that as a matter of fact, by this

process, once the actual marks awarded are reduced by 30%, then the lead that a person with 64 marks would get over a person who obtained 57 marks, i.e. a lead of 7 marks, would get reduced by the Corporations' method of calculation, to 5 marks only (i.e. the lead would get reduced to 5 marks instead of 7).

Hence, it has been reiterated that the scope of favouring candidates in the interview process would be increased, with more leverage available with the interview Board.

30. The replication then states that the result of the written exam was actually tabulated on 03.12.2008, whereas admittedly the criteria was finalized on 24.12.2008, as given in the written statement itself, and finally conveyed to the recruitment agency on 30.12.2008.

That criteria, was deliberately changed from the previous year, by assigning a higher percentage of marks to the interview than the group discussion.

Thus, it is again contended that the entire selection process was engineered to suit particular candidates.

31. Consequently, while reiterating the prayer made in the writ petition, that the appointment of respondents No.3 to 10 as Deputy General Managers (General Administration) be quashed and the petitioner having obtained the 4th position in the written examination, be directed to be appointed on the said post, a further prayer has been made that the selected candidates be not confirmed on the posts in question.

32. Addressing arguments, Mr. Puneet Bali, learned Senior Advocate appearing for the petitioner, detailed the facts already given, including the arguments already noticed while giving the contents of the writ

petition. Hence, those arguments need not be repeated. The arguments addressed by learned senior counsel, in rebuttal, shall be detailed at the appropriate stage.

33. Appearing for the respondent Corporation, Mr. Rajesh Garg, learned Senior Advocate, submitted that firstly, the application of the petitioner for the examination, not having reached on time, due to any postal delay etc., was not the fault of the recruiting agency (All India Management Association, Centre for Management Services) and hence, even if the petitioner had applied on time alongwith necessary fee and documents required, he cannot claim consideration for selection in any case, even with the provisional benefit granted to him by this Court, of sitting in the written examination, in the writ petition earlier filed by him (CWP No.19088 of 2008).

Mr. Garg further submitted that the selection was by way of an open competition, not restricted to “in-house” candidates of the FCI alone. Further, there was not even a quota fixed for appointment of candidates from the Corporation.

Hence, he submitted that even if the application of the petitioner was submitted by him through proper channel, but it still did not reach on time, despite his office in Panchkula having forwarded it within time, he could not draw any benefit of postal delays.

In this regard, Mr. Garg cited a judgment of the Supreme Court in **State of Bihar and others v. Amrendra Kumar Mishra** (2006) 12 SCC 561, wherein it was held that a candidate who did not join a post within the stipulated period, could not take advantage of any postal delay in the appointment letter reaching him.

Mr. Garg therefore submitted that the same principle would apply even where the question was not of appointment, but of appearing in an examination, where the admission card did not reach the applicant on time due to postal delays.

34. Mr. Garg further cited a judgment of a Full Bench of this Court in **Rahul Prabhakar v. Punjab Technical University, Jalandhar and others** 1997(2) ILR (P&H) 292. In that case, it was held that if an application had not reached the Coordinator or the competent authority, thereby disabling the candidate from appearing in examination, the postal delay, not being the fault of the examination conducting agency, the Court would not interfere to grant any benefit to the candidate, even if the delay by the postal authorities was for months on end. Hence, as per Mr. Garg, the petitioner could derive no benefit of an application made on time not having reached the selection agency on time.

35. As regards the change of the criteria, Mr. Garg submitted that the CBI, in fact, erred in stating that the criteria had been changed during the selection process, inasmuch as, it was changed before the declaration of the result of the written examination. The written examination result was declared on 28.01.2009 whereas criteria was decided on 24.12.2008 and conveyed to the selecting agency on 30.07.2008. Hence, he submitted that no benefit could be taken by the petitioner on that count.

However, it needs to be noted at this stage itself, that the petitioners' specific contention in his replication is that the result was declared on 03.12.2008, though in the writ petition it has been stated that the result was declared on the internet on 28.01.2009.

On query, Mr. Puneet Bali, learned senior counsel, on

instructions, stated that the result of the written examination was tabulated on 03.12.2008 (with the exam having been conducted on 09.11.2008), though the result was finally displayed on the internet on 28.01.2009. He submitted that this would also be obvious from the fact that in the reply filed by the CBI (respondent No.11), it has been stated that the criteria was changed after the written examination and in fact, even the ratio of candidates to be called for the group discussion/interview, on the basis of the written examination, was changed from three candidates to a post, to five candidates to a post.

36. Coming back to the arguments of learned senior counsel appearing for the Corporation, he further submitted that the petitioner had not challenged the criteria when he had earlier filed CWP No.19088 of 2008 and hence, was precluded from challenging the same now in this petition.

He next submitted that in any case, the criteria was not changed for the post of Deputy General Manager alone but for all the 91 posts advertised.

Learned senior counsel thereafter pointed to that part of the CBIs' reply (para -4) wherein it states that it was only the weightage between the group discussion and the interview that was interchanged. Thus, he submitted that there being no change in the criteria with regard to reduction of marks of the written test, from the previous years, the petitioner could have no grievance in that regard.

37. Mr. Garg next submitted that the appointment letters to the selected candidates were issued in March 2009, whereas the petitioner first approached this Court for modification of the order by which CWP No.19088 of 2008 had been withdrawn, only in August 2009. Thereafter, despite the liberty granted on 25.08.2009 by this Court, to file a writ petition challenging

the selection process, the present petition was actually filed only in February 2010, for which there is no explanation by the petitioner.

38. Lastly, Mr. Garg submitted that the petitioner was actually issued a charge sheet on 24.02.2009, in respect of, firstly, excess payments made to the extent of Rs.94 crores, to the Arunachal Pradesh Government, due to his negligence, and for having issued about 400 certificates of inadmissible bills of sugar, of the Arunachal Pradesh Government, leading to an excess payment of Rs.7 crores, and two other similar charges. Eventually he was imposed a punishment of reduction of pay by three stages, vide an order dated 04.08.2011 (later placed on record by the Corporation in the present proceedings, as Annexure R-2).

Hence, Mr. Garg submitted, that with the appointment letters pursuant to the selection process in question having been issued in March 2009, the petitioner in any case could not have been issued the appointment letter, he already having been charge sheeted in February.

Mr. Garg further submitted that the petitioner, in his Annual Confidential Report for the year 2011, had remarks of doubtful integrity incorporated, on account of the aforesaid excess payments.

Therefore, as per learned senior counsel, in view of the instructions dated 23.12.2013 issued by the Corporation, the petitioner, in any case, could not have been appointed to a higher post, when he stood charge sheeted before such appointment.

39. Learned senior counsel relied upon following judgments in support of the arguments made by him:-

i) **Vijay Syal v. State of Punjab**, 2003 (3) RSJ 101;

-- On the issue of the appellants seeking relief by making false

statement before the Court/misrepresentations.

- ii) **M/s Mutha Associates and others v. State of Maharashtra and others**, (2013) 14 SCC 304;

-- On the issue that simply on suspicion, with no clear proof of malafides, an order passed by an authority should not be quashed.

- iii) **State of Punjab v. V.K. Khanna**, (2001) 2 SCC 330:

--On the issue that there must be cogent evidence on record to conclude that an action suffers from malice or bias.

- iv) **State of Bihar and others v. Amrendra Kumar Mishra** (2006) 12 SCC 561;

- v) **Rahul Prabhakar v. Punjab Technical University, Jalandhar and others** 1997(2) ILR (P&H) 292;

--Both on the issue of effect of postal delays with regard to appointment letters and applications sent well in time (as already noticed).

40. Mr. Rajiv Atma Ram, learned senior counsel appearing for respondents No.3, 5, 6 and 9, i.e. some of the selected candidates, first referred to the advertisement (Annexure P1) by which applications for the selection process were invited. He submitted that the last date for receiving the applications was 25.08.2008 and even though the petitioner may have applied on time, it was obvious from the letter addressed by the Corporation to its counsel on 20.03.2009 (Annexure P-12), that it was not clear as to whether the application was accompanied with the requisite fee by way of a demand draft.

He submitted that even in the writ petition, the petitioner had not specified as to whether fee had been sent alongwith the application.

41. Mr. Atma Ram next submitted that after the petitioner filed CWP No.19088 of 2008, he did not disclose that a charge sheet had been issued to him on 24.02.2009, even though he had eventually withdrawn the petition

only on 26.03.2009.

He further submitted that even in the present petition, filed in February 2010, disclosure of the charge sheet issued to him had not been made.

He, therefore, cited a judgment of a Full Bench of this Court in **Chiranji Lal and others v. Financial Commissioner Haryana and others** (AIR 1978 P&H 326), to submit that a petitioner who does not come to the Court with clean hands, cannot be given any relief by the Court.

42. Learned senior counsel next contended that as a matter of fact, due to the charge sheet issued to the petitioner, as eventually admitted by him (in his application, i.e. CM No.11780 of 2015, dated 07.09.2015, subsequently filed in this petition), he was eventually not considered for selection even in the process conducted in the year 2011, and a writ petition filed by him (CWP No.4502 of 2011) for that purpose, was dismissed on 14.03.2011, holding therein that since his conduct was under a cloud, he could not be considered for even direct appointment on a higher post, when he was not eligible for such appointment by promotion, due to the charge sheet issued to him. The Letters Patent Appeal (LPA No.599 of 2011) filed by the petitioner against that judgment, was also dismissed by a Division Bench.

Mr. Atma Ram submitted that as a matter of fact, the charge sheet was not issued to the petitioner just 'out of the blue', but upon a report by the Vigilance Commission and the CBI.

43. As regards the change of criteria, Mr. Atma Ram pointed to Annexure P-9, filed by the petitioner himself, which is a document proposing the criteria to be adopted for selection to different posts, including the post in

question, in which the issue of weightage of marks is discussed.

Learned counsel submitted that it was after thorough discussion that the criteria which was proposed on 22.12.2008, was eventually decided upon on 23.12.2008.

However, he submitted that in any case, whether it was changed before or after the conveyance of the result of the written test to the FCI, by the selection agency, makes no difference, as the criteria remained the same.

Again it needs notice here itself, that this argument is obviously fallacious, in view of the fact that the change of criteria from 20% marks assigned for the interview and 10% for group discussion, was obviously made after the written result had been tabulated and conveyed to the Corporation by the selection agency. This is obvious from Annexure P-10, which is a document signed by the afore-mentioned Debasish Mishra, Deputy General Manager (RPI), on 23.12.2008, wherein it is specifically stated that the earlier criteria was 70% : 20% : 10% for the written test, group discussion and interview respectively, which has also been specifically stated in the reply of the CBI.

44. Mr. Atma Ram next submitted that despite alleging malafides, no specific person has been impleaded as a party in the petition, and even the CBI, in its reply, has stated that no proof of malafides could be ascertained.

Hence, the allegation itself is contended to be a bogey.

Learned senior counsel next reiterated the arguments made by Mr. Rajesh Garg, with regard to the petitioners' application never having been received, he having withdrawn his earlier petition and his ineligibility for appointment in any case, in view of the charge sheet and eventual punishment meted out to him.

In this regard, learned senior counsel also submitted that the petitioner, as a matter of fact, had no locus-standi to challenge the selection process, as has already been held in his own case, in the writ petition and LPA filed by him (referred to earlier), in relation to the 2011 selection process.

45. Lastly, learned senior counsel submitted that even if this Court eventually comes to the conclusion that the petitioner is to be selected, pursuant to the selection process in question, his appointment could be ordered without disturbing the selected candidates, in view of the fact that even in the advertisement (Annexure P-1) it had been stated that the number of the vacancies were variable and could be increased or decreased at the discretion of the Management. Hence, learned senior counsel submitted, that with the selected respondents having foregone their chances to subsequent selection also, having been already appointed by the selection process in question, their selection at least did not deserve to be set aside, especially as even the post of Assistant General Manager, on which they were earlier working prior to their selection as Deputy General Managers, had been filled up.

46. Mr. Rajiv Atma Ram cited the following judgments in support of his contentions:-

- i) **Union of India and others v. Tilak Raj Gandhi**, (2014) 3 SCC 145;

--On the issue that if an employee is facing an inquiry, at the relevant time, he cannot be granted appointment.

- ii) **Chiranji Lal and others v. Financial Commissioner Haryana and others** (AIR 1978 P&H 326) (on suppression of malafides, as already noticed);

iii) **Tej Prakash Pathak and others v. Rajasthan High**

Court and others, (2013) 4 SCC 540, wherein the matter has been referred to a larger Bench for a decision on the issue as to whether a change of criteria can be adopted during the selection process, so as to adopt a more rigorous scrutiny for selection.

iv) **Baldev Singh v. The State of Punjab and others (FB)**,
1980 (3) SLR 385;

-- On the issue of whether the misconduct committed by an *ad hoc* Government employee can be taken into consideration for appointment of the employee on a regular basis.

47. Mr. G.S.Bal, learned senior counsel appearing for respondent No.8, submitted in terms of what is stated in the reply of the said respondent, to the effect that the petitioner cannot be aggrieved by this respondents' selection, she belonging to the reserved category (SC) and the petitioner to the general category.

48. In this regard, Mr. Bal cited the judgment in **Hashni Kumar v. State of Punjab and others**, 2004 (3) RSJ 766.

Mr. Puneet Bali, however, submitted that respondent No.8 has been impleaded in view of the fact that the entire selection process has been challenged.

Mr.G.S.Bal thereafter, reiterated the arguments raised by the learned senior counsel appearing for the other respondents.

49. In rebuttal, Mr. Puneet Bali first submitted that as regards the charge sheet issued to the petitioner and the alleged concealment of that fact, factually the petitioner withdrew the previous writ petition, i.e. CWP No.19088 of 2008, on 26.03.2009, without the Corporation having filed any

reply thereto to state that the petitioner had been debarred from the selection process on account of the fact that a charge sheet had been issued to him. Hence, with the petition simply having been withdrawn, there was no occasion whatsoever, to submit anything with regard to the charge-sheet, especially as even counsel for the respondent Corporation did not make any submission with regard thereto, (when the petition was withdrawn).

As regards the present petition, Mr. Bali submitted that with the charge sheet having been issued well after the entire selection process for the current selection was over, i.e. even the group discussion and interview had taken place on 29/30.01.2009, with the charge sheet issued on 24.02.2009, it cannot stand in the way of the petitioner in any case, because if he is to be selected, his record up to the point of selection, is wholly without any blemish.

He further submitted that in any case, as disclosed by the petitioner in CM Application No.11780 of 2015, the charge sheet has actually been issued only to ensure that the petitioner does not succeed in the present petition, and he has been debarred from future selection to a higher post, as is obvious from the fact that the charges in the said charge sheet, pertain to events that were five to nine years old, i.e. for the period between 2000 and 2004. Hence, whether or not such charge sheet has any effect on the petitioners' subsequent promotions/appointments, learned senior counsel submitted that it cannot have any effect on the present selection process. Therefore, though the petitioner had not initially mentioned the charge sheet in the writ petition now filed, he has duly disclosed it by way of the aforesaid application, well before the petition came up for final hearing on merits.

50. As regards the petitioner being debarred from appointment on

account of the charge sheet issued to him, other than repeating what had earlier been submitted, that the charge sheet was issued well after the selection process was over and even the punishment order reducing the stage of the petitioners' pay was passed in 2011, i.e. two years after the appointments had been made, learned senior counsel pointed to instructions applying to the Corporation, as were referred to by the Division Bench of this Court that had dismissed LPA No.599 of 2011 filed by the petitioner against the order of the learned Single Judge rejecting the petitioners' claim to participate in the 2011 selection process.

As per the said instructions, a certificate is to be issued by the employer of the candidate, to the effect that there is no vigilance/disciplinary case pending against the employee applying for any post, for selection by direct recruitment.

He thus submitted that in terms of the said instructions, the petitioner would be duly entitled to the aforesaid certificate for the selection in question in the present petition (2008-09 selection), as the said certificate would obviously have been issued to him at the time that he applied for the post in question, in 2008, as there was no disciplinary enquiry pending against him at that stage, right through the entire selection process, culminating in the group discussion and interview held on 30.01.2009.

51. As regards the instructions relied upon by Mr. Garg (given in Court), dated 23.12.2013, issued by the Ministry of Personnel, Government of India, in which it is stated that applications of existing employees, for consideration of appointment to a post by direct recruitment, should not be forwarded by his employer if he is facing disciplinary proceedings or sanction for prosecution etc., Mr. Bali referred to instructions dated

10.12.2013 issued by the same source (part of Annexure P-23, annexed with CM No.11780 of 2015). By these instructions it was conveyed that Fundamental Rule (FR) 29 (2) had been amended to the effect that once the effect of the punishment of reduction to a lower scale has worn off after the specified period is over, the employee would regain his old seniority.

Therefore, Mr. Bali submitted that even though the disciplinary proceedings and the punishment order against the petitioner have been challenged by way of a different writ petition, even taking that the disciplinary proceedings were pending at the time of appointment of the private respondents herein, at best the petitioners' reduction in pay scale, as per the punishment order of 2011, would be in his new post of DGM and not in the post of Assistant General Manager, in view of the fact that, to repeat, the selection process stood completed prior to the issuance of a charge sheet to the petitioner and as such, he being in the fourth position in the written test, he would, in all probability, have been appointed, after the group discussion and interview, had he been called for them, and therefore, simple pendency of a charge sheet, without any result thereupon for another 2 years, would not debar him from fresh appointment to the post of DGM.

Hence, learned counsel submitted that even the judgment in the petitioners' own case, in LPA No.599 of 2011, would not come in his way for the selection process in question in this petition, because in the other case, by the time the selection process of 2011 had started, the petitioner had already been charge sheeted and as such, the Division Bench held that once a certificate could not be issued to him to the effect that there was no charge sheet pending, he could not be considered eligible for applying for the post advertised.

52. Mr. Bali next pointed to paragraph 5 of the petitioners' application (CM No.11780 of 2015), to submit that the Corporation had allowed the application of a candidate, for the same post, who was actually facing CBI prosecution and disciplinary proceedings, even at the time when he applied for the post of DGM (General). The said candidate, one Shri Subranshu, cleared the written examination and thereafter appeared in the interview and group discussion but was not selected only due to his merit ranking.

Hence, learned senior counsel submitted that the Corporation cannot have doubled standards and attempt to oust the petitioner from the selection process, when even a charge sheet had not been issued to him.

52-A. It is to be noticed that though the contents of this application (CM No.11780 of 2015) have also been referred to by the learned counsel for the private respondents, in a different context, as already noticed earlier, however, it is seen from a perusal of the order sheet in this petition, that no formal notice was issued in this application to the respondents. Hence, naturally, there is no reply to the contents thereof. Yet, from the record of the Corporation pertaining to the examination (having been summoned by this Court), learned counsel for the Corporation has not been able to refute the aforesaid contention of the petitioner, (with regard to the candidate of aforementioned Subranshu).

53. Mr. Bali then drew the attention of this Court to the fact that the petitioner had even been promoted to the post of DGM (General), as per seniority, in the year 2013, i.e. after the punishment had been imposed upon him in 2011. Hence, he submitted that the entire argument of the respondents, that because of the charge sheet and the punishment the petitioner could not

have been appointed by direct recruitment, by way of a process that culminated in January 2009 itself, is an argument completely without basis.

He further submitted that even subsequently, the petitioner had been graded 'Outstanding' and 'Very Good' in the Annual Appraisal Performance Reports for the years 2011-12, 2012-13 and 2013-14.

(The above averment was made by referring to the affidavit of the petitioner, accompanying CM No.11780 of 2015, and to repeat, though no notice was issued in this application, the facts pointed out, have not been refuted by the learned counsel for the Corporation, even from the record summoned).

54. Mr. Bali, submitted, in fact, that the arguments of all the learned counsel for the respondents, that the petitioner had concealed facts, turned around against the respondents themselves, for having withheld the above facts.

55. Learned senior counsel then again pointed to the reply of the CBI, to submit that legal malafides on the part of the respondent Corporation were obvious, in trying to oust the petitioner from selection, to favour the favourite candidates of the top management. He submitted that this is obvious from the fact that though the CBI had stated that it had not been able to obtain proof of malafides, the reply specifically stated that the recommendations to change the criteria and the weightage pattern after the selection process had started, actually adversely affected some candidates who had secured good marks in the written examination, and that this was done on the recommendation of Debasish Mishra who was also instrumental in including G.Kartikeyan in the OBC category.

Learned counsel therefore submitted, that actually the only

reason why the CBI had thereafter left the matter to the discretion of the Management of the Corporation, was because G.Karthikeyan actually did not get selected eventually, and the enquiry with the CBI was specific to that issue. However, the selection process having been moulded to suit favourites, was very obvious from the enquiry of the CBI, as reflected in its reply.

56. Lastly, Mr. Bali submitted that if this Court, on the basis of submissions made, holds the selection process to be vitiated, the petitioner and others who had applied for the post in question, could still participate in the selection process and thereafter the selection would be wholly on the merits of that selection process, if fairly held.

Alternatively, he submitted that if the selection process is held to be vitiated and no further selection process is ordered, the petitioner would become senior to the private respondents by virtue of the fact that the selection process having been quashed (if that is done), his own promotion as DGM in the normal course, as it has been done, would still stand, thereby making him senior to the private respondents.

57. Rebutting the contentions of learned counsel for the Corporation to the effect that if the application form had not reached the agency for any reason, the petitioner could not claim any legitimate right to appear in the examination, Mr. Bali again pointed to Annexure P-12, i.e. the letter from the Corporation to its counsel, to show that the Corporation had admitted that its office had forwarded the petitioners' application to the post office of the selecting agency on 07.08.2008, and further, he pointed to a copy of a file noting (Annexure P-14), wherein it was also admitted by the Corporation that the requisite fee had also been submitted by the petitioner, with his

application.

Therefore, learned senior counsel submitted that with the Corporation having admitted these facts and with the petitioner having also appeared in the written examination, on the intervention of the Court, it did not lie in the mouth of the Corporation to submit that he could not have appeared. In fact, he submitted that it just shows the malafide intent of the Corporation, in ousting the petitioner by one method or the other.

Pointing to the judgment of the Supreme Court relied upon by Mr. Garg, i.e. *Amrendra Kumar Mishras' case* (supra), he drew attention to paragraph 8 thereof, to show that the situation there was completely different, where the candidate/appointee had not exercised due diligence within time. Thus, with the petitioner in the present case having approached this Court by way of CWP No.19088 of 2008, immediately on coming to know that he had not been issued the admission card, that judgment could not work to the benefit of the respondents. He also pointed to parts of the Full Bench judgment in *Rahul Prabhakars' case* (supra), to submit that it was not applicable to the petitioners' case.

Thus, having made the aforesaid arguments, Mr. Bali prayed that the writ petition be allowed in the terms prayed for or, alternatively, the prayer of the petitioner for quashing the selection process in question be allowed and if the Court further considers it necessary, then the entire process of selection be ordered to be re-conducted.

58. In support of his arguments, Mr. Bali relied upon the following judgments:-

- i) **M/s Citadel Fine Pharmaceuticals v. M/s Ramaniyam Real Estates P. Ltd. and another**, (2011) 9 SCC 147;
- ii) **Arunima Baruah v. Union of India**, (2007) 6 SCC 120;

- iii) **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and others**, (2004) 7 SCC 166;

-- All the three above, are on the issue of refusal by the Court to entertain a petition on the ground of withholding of material facts. It was held that the facts withheld must be shown to be material.

- iv) **Hemani Malhotra v. High Court of Delhi**, (2008) 7 SCC 11;
- v) **Tamil Nadu Computer Science Bed Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association and others**, (2009) 14 SCC 517

--- Both on impermissibility of changing the criteria after the selection process had started.

- vi) **Rajesh Kumar Gupta and others v. State of U.P. and others**, (2005) 5 SCC 172.

--- On rights of candidates to challenge the selection, after it was over, when they found that the criteria had been changed during the selection process.

59. Having considered the arguments of all learned senior counsel appearing for the parties and having considered the pleadings before this Court, though in view of the change of criteria mid-way through the process of selection, by way of reversing the marks assignable to the group discussion and interview, the selection process from that point onwards deserves to be quashed, that exercise is not being directed by this Court, for the reason given hereinafter.

60. Foremost, the reason for not quashing the selection process in

question, at least from the point of change of criteria onwards, is that though undoubtedly at the time when the selection process was initiated and uptill the time that the process itself continued, i.e. uptill 30.01.2009, the petitioner had been issued no charge sheet, however, the result was eventually declared in March 2009 and appointments of the private respondents herein, were made thereafter. Thus, even if a new process, from the stage of group discussion and interview was ordered to be re-conducted by this Court, with the charge sheet already having been issued to the petitioner on 24.02.2009, and it eventually having resulted in punishment to him as is now seen *ex-post facto* (in relation to that point of time), it is obvious that the petitioner could not have been issued an appointment letter.

Thus even if the time frame is shifted from today to March 2009, the fact remains that the petitioner having been charge sheeted in February, 2009, the Corporation would have been well within its right to refuse to issue him an appointment letter, considering that even as per the instructions that were referred to by the Division Bench in LPA No.599 of 2011, a 'No Objection Certificate' was required to be issued at the time of the start of the selection process. Thus, logically, if a person can be debarred from even taking part in a selection process, upon a charge sheet having been issued to him, as has been held by the Division Bench in respect of the subsequent selection process that the petitioner wished to participate in, in 2011, then, in my opinion, the Corporation would be well within its right to refuse appointment to a selected candidate, if in the meanwhile such candidate has been charge sheeted.

This would be especially so as selection alone does not confer an absolute right of appointment.

Therefore, at this point of time, when even the charge sheet has been shown to have resulted eventually in a punishment imposed upon the petitioner, it would wholly illogical for this Court to quash the selection process and order it to re-commence from the point of the group discussion and interview onwards.

61. The situation would have been different if it had been brought to the notice of this Court that in the writ petition stated to have been filed by the petitioner, challenging the disciplinary proceedings and punishment imposed, the said disciplinary proceedings or the punishment had been quashed. No decision of such of this Court, or of the Supreme Court, to that effect, has been brought to the knowledge of this Court.

If that had been the situation, then obviously, with no charge sheet standing in the way of the petitioner, this Court would have, simply on account of the criteria having been changed mid-way through the process, with greater leverage given to the interview and to the group discussion, quashed the selection process from that point onwards and directed the respondents to reconduct the group discussion and the interview, allowing the petitioner to participate therein and thereafter to tabulate the result of successful candidates. With the charge sheet and punishment imposed upon the petitioner, no such direction can be given, as it would be fruitless, with the petitioner being ineligible to be appointed at the given point of time (March-April 2009).

62. In this regard, it may also be mentioned, though only for academic purposes, that had this been a case where the disciplinary proceedings had not been concluded, though started, this Court may still have directed the above action, leaving the fate of the petitioner, had he been

successful in the interview, to a sealed cover procedure. No doubt, a sealed cover procedure is adopted only for the purpose of promotion of an employee who is facing disciplinary proceedings but is otherwise in the zone of consideration for promotion. However, in a situation like this, where the petitioner was to be appointed within the same organization where he was already working, on a post one step higher, though by way of direct appointment by selection, this Court would have seen no harm in adopting a sealed cover procedure even for such appointment, in the circumstances.

However, that situation being well past over, and the petitioner already having been punished pursuant to such disciplinary proceedings, obviously there would be no point in directing a fresh selection even from the stage of the group discussion and interview.

63. It may also be noticed that there is no other candidate who had challenged the said selection procedure before this Court, on the ground that the criteria for selection was changed mid-way. Had there been any other petition before this Court filed by such a candidate, who was not hampered by any disciplinary proceedings but was simply aggrieved of the result due to a change in criteria, this Court would still have interfered to issue the above directions.

That is obviously also not the case.

64. Having held as above, it is still necessary for this Court to give reasons for making the above observations, in view of the fact that it has been held that the selection procedure deserve to be quashed, but for the fact that the only petitioner who has challenged the same, could not have been appointed. As such, the reasoning for the same needs to be given by this Court.

65. The contention of Mr. Atma Ram, learned senior counsel, that since the issue of the criteria being allowed to be changed during the selection procedure, has been referred to a larger Bench of the Supreme Court and hence, this Court would not hold to the contrary, is a wholly unsustainable argument, for two reasons.

Firstly, of course, *Tej Prakash Pathaks' case* (supra), is still under consideration before their Lordships. Thus, the law as it stands today, in terms of the judgment cited by the learned counsel for the petitioner, in *Hemani Malhotras' case* (supra), which considered the entire law on the subject, including the earlier judgment in **K. Manjusree v. State of A.P.** (2008) 3 SCC 512, is that the 'rules of the game cannot be changed during the process of the game or after the start of the game'.

Thus, with the selection process having been initiated vide the advertisement prescribing the last date therein to be 25.08.2008, the selection criteria could not have been changed especially at a stage when, admittedly, the result of the written examination had already been conveyed by the selection agency, i.e. the All India Management Association, Centre for Management Services, to the respondent FCI.

Secondly, it is to be noticed, that in *Tej Prakash Pathaks' case*, while referring the issue to a larger Bench, their Lordships have expressed a doubt whether the principle of non-change of criteria can hold, in a situation where the change of criteria is to to make the selection procedure more stringent. In the present case, in any case that is not the situation. If anything, the changed criteria has been relaxed giving larger discretion to interfere with the result, to the management of the Corporation, by assigning 20% marks to the interview and 10% for the group discussion, whereas it was the other way

round before the change of criteria. Hence, that argument of learned senior counsel for the private respondents, fails.

66. Coming then to the argument of Mr. Garg, learned counsel for the Corporation, that the petitioner could not even have been considered for appearing in the group discussion and interview, as his application despite having been deposited by him within time, did not reach the selection agency by the due date. In my opinion, even the judgments cited in that regard by the learned senior counsel for the Corporation, do not help him, because the petitioner acted with due diligence immediately on coming to know that he had not been issued the admission card for the written examination, despite it having been issued, to others. He immediately thereafter filed CWP No.19088 of 2008 and by interim order, was allowed to sit in the examination held on 09.11.2008.

Thereafter, it has also been shown to this Court from file noting (though such file notings, as per settled law, should not be referred to by a petitioner working in a Government/semi-Government organization), that the application submitted by him, duly forwarded by his regional office at Panchkula, was otherwise complete in all respects, including deposit of requisite fee. Even if the petitioner had not annexed the file noting, in a petition seeking issuance of writ of certiorari, the records are bound to be produced by the respondents and as such, even from those records, the respondents have not been able to refute the fact that, factually, the petitioner had submitted the form on time alongwith all the requisite formalities. Hence, in such a situation, with him having approached this Court well within time at that stage and having obtained an interim order to sit in the written examination, it would be wholly absurd to hold that his sitting in the

examination be taken to be *non-est*.

67. Having said that, the fact is that the petitioner himself withdrew CWP No.19088 of 2008 (on a statement made by his counsel in that petition), on 26.03.2009. Undoubtedly, this would be a factor which would otherwise be held against the petitioner, debarring him from even filing this petition. However, it is not denied by the respondents that the petitioner had actually filed an application under the Right to Information Act, 2005, on 20.01.2009 itself, to obtain the results of his performance in the written examination which application was not supplied to him despite a reminder thereto, necessitating an appeal by him, under the Act of 2005. Thereupon he was eventually supplied the information with regard to him having secured the 4th position in the written examination, only in June 2009.

As a matter of fact, the malafides of the Corporation become only too obvious by simply this fact. This is furthered by the fact that at no stage did the Corporation even attempt to tell this Court in the previous writ petition (CWP No.19088 of 2008), that the petitioner had actually passed the written examination, securing the 4th position.

Undoubtedly, the declaration of the result of the petitioner was only to be made upon obtaining permission of this Court, as per the interim order passed in that petition. However, the onus to do so fell squarely upon the respondents, once the result had been conveyed to them by the selection agency. Further so, because the result was not even declared to the petitioner, for him to bring it to the knowledge of this Court in CWP No.19088 of 2008, after he had filed the application under the RTI Act. With the respondents deliberately withholding crucial information, from the petitioner as also from this Court, in my opinion, the malafides, or at least the complete callousness,

of the Corporation, is only too evident.

For that, the petitioner deserves damages for unnecessary harassment by the Corporation, even though it has been held by this Court that he would not be entitled to appointment at that point of time, even if he were to be selected.

Accordingly, Rs.20,000/- compensation by way of damages, for unnecessary harassment due to non-disclosure of the result of the petitioner (in the written examination), to him and to this Court, is ordered to be paid by the Corporation to the petitioner.

68. Coming then to the issue raised by the petitioner on reduction of marks proportionately in the written examination, thereby allegedly granting greater leverage to the respondents to manipulate the marks in the group discussion and interview.

Though I am not in disagreement with this contention, because obviously when the group discussion and interview are assigned marks as per the actual marks obtained, as has been specifically stated by the Corporation in its reply, there should be no reason to reduce the percentage of marks obtained in the written examination, which is obviously an objective analysis of a candidates' knowledge. Thus, the objective criteria is reduced by this method, thereby giving more leverage of awarding marks by the subjective criteria, i.e. the group discussion and interview.

Yet, having opined as above, this Court would not interfere in that aspect, for the reason that it is a practice that has been obviously carrying on over a long period of time and in fact, it has been stated that the petitioner himself was also selected to the initial post that he was appointed to in the Corporation, by the same method. Hence, to change that criteria, without a

thorough analysis of it, even while expressing reasoning against it, would not be correct, in the opinion of this Court.

Hence, the petitioners' contention, in that regard, without a complete discussion on the issue, is rejected.

69. Thus, despite the above discussion, holding that the criteria for the selection process in question was wrongly changed, at a stage when it could not have been changed even as per the law as it stands today, especially when the interview was given greater weightage than the group discussion, thus assigning marks even beyond 15% that are usually to be assigned for interviews, (of the total marks where a written examination is held), yet, for the reason already given at the beginning of the discussion on the issue, i.e. that the petitioner due to the charge sheet issued to him prior to the final selection of the private respondents and the punishment eventually imposed upon him, would be ineligible for appointment to the post, the selection is not being quashed even from the stage of the group discussion and interview.

This is also for the reason, to repeat at the end of the judgment, that no other petition challenging the change of criteria, by any other person (who was not under cloud of a charge sheet), is under consideration of this Court, and as such, quashing a selection process, more than six years after it has been completed, in a petition filed by a person who eventually cannot be appointed to the post in question, would not be a prudent exercise in the opinion of this Court, with the disciplinary proceedings and the punishment imposed, still standing against the petitioner.

70. Hence, in view of the above, the writ petition is dismissed; but because the petitioner was unnecessarily harassed by not disclosing his written result within time, either to him on his application under the RTI Act,

or to this Court (in CWP No.19088 of 2008), as the Corporation was bound to disclose, the respondent Corporation is directed to pay the petitioner damages to the extent of Rs.20,000/-, within a period of two months from the date of receipt of a certified copy of this order.

March 29, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE