

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

Decided on: 31.03.2016

+ **LPA 168/2016**

MOHIT PANWAR AND ORS.

.....Appellants

Through: Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa and Sh. Sameer Sharma, Advocates.

Versus

AIRPORTS AUTHORITY OF INDIA

.....Respondent

Through: Sh. Digvijay Rai, Advocate.

+ **LPA 171/2016**

ABHAY SHARMA AND ORS.

.....Appellants

Through: Sh. P.P. Khurana, Sr. Advocate with Ms. Tamali Wad, Advocate.

Versus

AIRPORTS AUTHORITY OF INDIA THR. ITS CHAIRMAN

.....Respondent

Through: Sh. Digvijay Rai, Advocate.

+ **LPA 172/2016**

WASEEM AKRAM

.....Appellant

Through: Sh. P.P. Khurana, Sr. Advocate with Ms. Tamali Wad, Advocate.

Versus

AIRPORTS AUTHORITY OF INDIA THR. ITS CHAIRMAN

.....Respondent

Through: Sh. Digvijay Rai, Advocate.

+ **LPA 173/2016**

MUKESH KUMAR DAHIYA

.....Appellant

Through: Sh. P.P. Khurana, Sr. Advocate with Ms.
Tamali Wad, Advocate.

Versus

AIRPORTS AUTHORITY OF INDIA THR. ITS CHAIRMAN

.....Respondent

Through: Sh. Digvijay Rai, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellants are aggrieved by a common judgment and order of a learned Single Judge whereby their writ petitions were dismissed. The appellant in LPA 173/2016 seeks leave to file an appeal against the judgment of the learned Single Judge in W.P.(C) 2204/2014. He argues that given the findings in the impugned judgment, his grievance cannot be addressed through a writ petition since the learned Single Judge would be bound by the previous ruling that concern the same recruitment. This appellant had applied for the post of Junior Executive (Airport Operations). In the other appeals LPA 168/2016, LPA 171/2012 & LPA 172/2012 the common judgment and order of the learned Single Judge whereby several writ petitions were rejected is challenged.

2. The appellant in LPA 168/2016 had applied for recruitment for vacancy in the post of Junior Executive (Engineering-Civil); the appellants in LPA 171/2016 had applied for vacancy in the post of Junior Executive (Engineering-Electrical); Junior Executive (IT) and Junior Executive

(Airport Operations). LPA 172/2016 had applied for vacancy in the post of Junior Executive (Engineering – Electrical). By the impugned order in the writ petitions, the Airports Authority of India (AAI) decided to redo the selection process and not proceed with the recruitment for the vacancies in the posts to which the appellants had applied and appeared in the selection process. Learned Single Judge rejected their contention that the decision not to appoint them was arbitrary.

3. The facts necessary to decide these cases are that the AAI issued an advertisement on 01.03.2012, proposing to fill 558 vacancies in 33 different cadres/posts. Eligible applicants had to apply online. The appellants applied to the vacancies in the cadres of Junior Executive (Engineering-Civil, IT, Electrical and Airport Operations). The particulars furnished by them were considered and they were allowed to appear in the written test. It is not in dispute that the appellants were also issued with the Roll numbers; they did participate in the written test. In the results declared in the month of January, 2013, the Authority indicated that all appellants were successful in the written test. Some appellants were also interviewed for the posts. When they were awaiting further intimation regarding completion of the selection process and issuance of appointment letters, the AAI on 10.05.2013, issued a notice stating that for administrative reasons, the recruitment process had been kept on hold/withheld till further orders. Since no further intimation or information was forthcoming, one of the candidates filed a writ petition - *Vikas v. AAI* [W.P.(C) 399/2014]. That writ petition was disposed of on 29.01.2014. Learned Single Judge directed the competent authority to decide the matter as expeditiously as possible – within eight weeks. The AAI had

contended that a Committee had been appointed to look into the irregularities in the conduct of the test/examination and that the Committee had recommended that the written examination should be held once again. In the counter affidavit filed by AAI, it had also been indicated that an investigation was on and that legal advice was sought for guidance whether in the light of the criminal investigation by the Central Bureau of Investigation (CBI), what would be the appropriate action that could be validly taken.

4. Having regard to the above background of facts, ultimately on 02.03.2014, the AAI issued a notification which stated that a second or re-examination for the vacancies that were advertised in 2012 would be held. The said notification (impugned notification) reads as follows:

“Notification regarding withheld recruitment under Advertisement No.02/2012”

Attention of the candidates is invited who appeared in written examination for the post of Manager/Junior Executive of various disciplines except Junior Executive (Fire Services) in pursuant to above advertisement.

It is decided to redo the entire selection process afresh for above posts, except Junior Executive (Fire Services) due to administrative reasons.

The notified terms and conditions in the advertisement No.02/2012 will remain same and the candidates who earlier appeared in the examination and subsequent process are required to appear again in the re-examination to be conducted. Date of written examination will be notified in due course of time on AAI website.

Admit Cards indicating the date, time, venue and other details will be sent through e-mails to all the concerned candidates.

Candidates may keep visiting our website www.aai.aero for further details.”

5. The appellants were aggrieved by the impugned order; they approached with several writ petitions. The AAI's counter affidavit in the writ petitions had relied upon the report of a Committee dated 12.11.2013 which faulted the conduct of the test by M/s. Centre for Policy Research (CPR) which had conducted the test and the entire process. The Committee had recommended that the entire process should be redone. The AAI also averred that the entire facts were under investigation by the CBI. During the course of proceedings before the learned Single Judge, the AAI produced certain file notings and also a copy of the investigation report of its Vigilance Cell. It also filed an additional affidavit which indicated that an overwhelming and disproportionately large number of candidates from a particular State and that the failure ratio in all other States of the country given that the process of selection was an All-India, was indicative of adoption of unfair means. The vigilance report stated that whereas 1962 candidates out of 8438 from Delhi Region, constituting 23.32% of those actually applied, appeared, i.e. working out to 44% of those appearing in the written test, those selected were as much as 90% from the Delhi Region alone. This far surpassed the number of candidates from any other Region.

6. The conclusions of the Directorate of Vigilance placed before the learned Single Judge are extracted below:

“Conclusion:

From the observations made through stage wise analysis brought out in previous sections, following conclusions can be made:

9.1 The recruitment process has been manipulated to favour a set of candidates belonging to Delhi region especially Haryana State or those candidates who have obtained their qualifying degree from this State. The higher written marks of these candidates with their poor credentials do not match with the average marks obtained by all India candidates with better credentials. Further it has been noticed that a large percentage of their options of wrong questions matches with each other which is abnormal while marking one out of four options. Thus it can be concluded that their results were predetermined by one of the following possible manipulation:

9.1.1 These candidates might have been supplied with the answer keys prior to /during the examination.

9.1.2 The OMR sheets were left blank by the candidates and the same were filled up later before declaration of results and these concocted answer sheets (OMR) were submitted to AAI to support the predetermined result of the written examination.

9.2 The agency for conducting the written exam was hired by falsification of the facts, eliminating competition and without verifying the credentials. Further the agency was given free hand in the conduct of the examination and no proper checks and balances were put in place, therefore, involvement of the concerned HR officials in the manipulation cannot be ruled out.

9.3 The integrity of the results provided by the agency is also doubtful in view of the wrong questions in the test booklets and discrepancies in the answer keys like no answers for one question and error in marks obtained by one of the candidate, i.e. Ms. Mona Taneja.

9.4 The recruitment agency, M/s. CPR does not fall under the purview of the Corporate Vigilance Department, therefore,

detailed investigation of this case could not be carried out. However, detailed investigation on irregularities in the appointment of the agency may be ordered for fixing responsibility of the concerned HR officials.”

7. After analysing the materials placed before him and considering all the contentions – including judgments cited, learned Single Judge was of the opinion that the petitioners were not successful in establishing that they were arbitrarily dealt with. He, therefore, dismissed all the writ petitions.

Contentions of the parties

8. It is contended by the appellants that the allegations made against them are baseless and entirely conjectural. Learned counsel firstly points out that the Committee's conclusions and the AAI's action are *ex-facie* discriminatory. In this respect, it is submitted that appointment letters were issued to candidates for the post of Junior Executive (Fire Services) which were also covered by the same advertisement. The recruitment process was conducted through the same agency. Therefore, the argument that the recruitment/selection process was tainted is unsustainable in law.

9. It is argued next that the AAI had been utilizing the services of the same agency (CPR) for the past six years. Based upon the sketchy and vague report of the Committee and the Directorate of Vigilance, the competent authority could not have concluded that the entire selection process had to be redone. It is argued that even though 20 candidates were selected for the post of Junior Executive (IT) of which 14 are from Haryana, the fact remained that these candidates were from different Universities. Therefore, the mere fact that large percentage of successful candidates belonged to a particular

State or Region itself could not have been factor to hold that the entire selection process was invalid.

10. It is argued next that the probability of two candidates having identical written answers cannot be ruled out. The reliance of the Committee's report and the AAI's position on this too demonstrated that some of the successful candidates' answers was almost fully identical to others who had failed, did not establish anything. In other words, the high probability of wrong answers did not in any way establish – much less in any conclusive manner that the appellants had adopted unfair means. Learned counsel highlighted that the Supreme Court has in several judgments, held that wherever allegations of large scale irregularities are levelled, the decision making authority is obliged to firstly attempt to sift the particulars and arrive at the truth. If it is possible to segregate tainted candidates from genuine ones, the concerned agency is under an obligation to do so under Article 14. Learned counsel relied upon *East Cost Railway v. Mahadev Appa Rao* AIR 2010 SC 2754 and *Joginder Pal v. State of Punjab* 2014 (6) SCC 644. It was argued that the decision of the competent authority was not based on any credible much less material circumstances to justify the AAI's position that the appellants' candidature and selection virtually had to be nullified and that they had to attempt the selection process afresh.

11. It is submitted that the learned Single Judge overlooked the fact that circumstance of fewer candidates appearing and attempting the written test proved nothing; such events were commonplace in Civil Services examinations. That a lesser number of candidates actually appeared could not lead to an inference that there was any unfairness in the test held by the

outside agency. Furthermore, contended senior counsel, at one stage that AAI had also taken a stand that questions and answer booklets were not given by CPR. Counsel points to a letter, dated 04.09.2013 addressed to AAI, by CPR stating that for the past six (6) years the CPR is conducting the examinations for the respondent. The CPR further stated that it has always supplied the original answer sheets call letters, and attendance sheets to the respondent along with the result of each examination. Copies of objective question booklets alongwith answer keys in respect of all the tests are supplied to the respondent. The respondent never asked CPR to provide any other documents in the past one year, when it sent various results. This issue was urged by AAI for the first time. It was also submitted that all the answer sheets were physically counted and tallied with the call letter before sending to the AAI. Towards the end AAI gave up all previous pleas and relied upon certain internal report. In preliminary report of the Directorate Vigilance it was observed that 44% candidates, who appeared for written test are from Delhi Region. However, in the final selection, 90% candidates are from Delhi Region.

12. Highlighting that AAI's investigation compared several answers of the petitioners to the not attempted answers, it is urged that in an examination where out of four given choices, one correct choice is to be opted, sometimes there is confusion which can lead to probabilities. Merely because out of 120 questions a candidate did not attempt 9 questions, out of which some matched with other appellants, by no stretch of imagination can lead to the conclusion of using unfair means. The learned Single Judge overlooked that the similarity in respect of some wrong answers with two other candidates

was merely a coincidental and probability of only five to nine similar answers being wrong cannot be absolutely ruled out. On the contrary, such a probability can be much higher. It is submitted that the candidates appeared from different rooms at the Delhi Centre. There was no link or connection between candidates, or for that matter, similarly between candidates appearing in different centres, but attempting in an identical manner. AAI had that as there is no negative marking in the test the reason for not attempting a question creates doubt about the candidate. In an objective type paper where 120 questions are to be answered in 120 minutes, it is common that some questions may remain unattempted. It is further stated by the respondent in the Report that even after not attempting several questions, the appellants scored good marks in written examination and were selected. The argument that such candidates manipulated their test attempts and used unfair means, therefore, is without merit.

13. On behalf of the AAI, it was contended that when the list of successful candidates for the post of Junior Executive (Information Technology) was submitted by the Human Resources Directorate to the Chairman for approval, the Chairman became suspicious about why most of the candidates i.e., 80% approximately were selected from Delhi/Haryana. He informed the Vigilance Directorate which carried out the investigation. The Vigilance Directorate conducted a detailed investigation with respect to the examination conducted to the post of Junior Executive (Information Technology) and submitted their initial finding indicating various irregularities observed by them. It is his submission that the irregularities observed by the Directorate are not only discrepancy related to procedure

and monitoring but are related to criminal misconduct for manipulating the written examination. The Directorate also recommended that there is no requirement to wait for consolidated report for all other disciplines/cadres that were advertised.

14. The findings in respect of one discipline were sufficient ground for sending the whole matter to the CBI. The CBI did not take up the case and was of the opinion that the matter must be looked into by the Crime Branch, Delhi Police. AAI argues that the Crime Branch is investigating the whole case. Urging that if the recruitment process is flawed AAI states that the petitioners should not get advantage of the same.

15. The recruitment process was outsourced to a private organization and from the investigation carried out by the Vigilance Directorate and the subsequent inquiry carried out in terms of the order of this Court, *prima facie* it showed that the process was manipulated as it disclosed that predominantly those candidates who appeared from Delhi were successful. AAI relied on its affidavit dated January 21, 2015 to contend that the total number of applicants is the highest in Delhi, the candidates appeared in the written test was 49.94% and the presence of the candidates in first hundred as per written test was 94% and the total number of candidates called for interview was 78.11% in Junior Executive (Airport Operations). It is stated that a similar position showed up in other streams inasmuch as in Junior Executive (Engineering-Civil), the total number of applicants from Delhi were 33.9%; candidates appeared in the written test were 43.67%, presence of candidates in first hundred as per written test was 73% and number of candidates called for interview were 79.45%. The preliminary report of the

Vigilance Directorate was relied on for the conclusions of that Directorate that there was cogent material for the respondent to take a decision. The exam conducted could not be trusted.

16. AAI highlighted that the manner in which the agency was appointed by the HR Directorate bypassing the settled procedure coupled with the irregularities pointed out, were sufficient grounds to say that the recruitment process could not be trusted as it tended to exclude a large percentage of candidates from the rest of the country, who could not appear and take the test and also in a skewed and lopsided result. It was stressed that there was *no mala fides* in the impugned action; there is no stigma attached to any of the petitioners. The test of reasonableness was met with. AAI relied on the decisions reported as *Sarkarsan Dash v. Union of India*, (1991) 3 SCC 47; *Union of India and Ors. v. Anand Kumar Pandey & Ors.* (1994) 5 SCC 663; *East Coast Railways v. Mahadev Appa Rao & Ors.* (2010) 7 SCC 678; *Union Territory of Chandigarh v. Dilbagh Singh & Ors* (1993) 1 SCC 154; *Pritpal Singh v. State of Haryana* (1994) 5 SCC 695 and *State of A.P. & Ors. v. D. Dastagiri & Ors.*, (2003) 5 SCC 373.

Analysis & Findings

17. The parameters applicable in judicial review whenever the recruiting authority suspects use of unfair means on a widespread scale, were first considered in *Bihar School Examination Board v. Subhash Chandra Sinha and Others* (1970) 1 SCC 648. It was held that:

“13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular

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

18. The observations and findings of the learned Single Judge, relevant for this appeal, are as follows:

In the preliminary report of the Directorate of Vigilance, which looked into the procedure adopted for the recruitment for the post of Junior Executive (I.T) from different aspects including advertisement, application process, written examination, interview, result, OMR sheets of the candidates called for the interview, test booklet/answer keys. With regard to written examination, some of the observations in the preliminary report are as under:-

"4.2.3 It is apparent from the agency's inability in adopting 9/10 digit roll numbers that the agency was already having pre-printed Test booklets/OMR sheets in advance before conducting the exam for advertisement No. 02/2012. This is against the spirit of fair and transparent conduct of exams.

4.2.4 The emails to the candidates requesting to download the hall ticket were not sent before commencement of the written test on 26.08.12. Also it was not checked that how many candidates had downloaded their hall tickets. This casual approach might have led to lower percentage (19%) of candidates turning up for the written exam.

4.2.5 The half ticket issued by the Dte. Of HR to the candidates was not having their scanned photographs and signatures uploaded at the time of application for matching the same during the written examination conducted by the agency. The details of the online recruitment applicants were forwarded by Directorate of HR to the agency in excel format does not include the scanned copy of photograph/digital or scanned signature of the candidate. Therefore the signature and photographs of the candidates were not verified during/after the written exams. This creates opportunity for proxy sittings in the exam.

4.2.6 It has been observed that the observer have given their report in a tailor made form i.e., Total No. of Candidates and their attendance at the specific center. However, no specific reports/Comments in the form of general administration i.e., any doubt about the question/copying or leakage of exam or any specific complaint made by the Candidate at the particular center was not given. However, Directorate of HR sought the report through RED/APD on conduct of the examination which has not been submitted by most of the center observers.

4.2.7 The agency vide their letter dt. 19.09.12 submitted the result of written test to GM (HR) which was held on 26.08.12 for the post of JE (IT). After receipt of the result from the agency the result was uploaded on AAI website on 16.10.12. However, it has been observed that no crosscheck or re-verification of the result viz-à-viz marks obtained by the successful candidates has been done by the HR as a confirmation.

4.2.8 It has been observed that after receiving the applications online, all the other activities were done manually or through M/s. CPR. This is not in spirit of online recruitment systems.

4.2.9 There is a scope for unscrupulous candidates to run away with the question paper in the beginning of exam or adopt other sophisticated electronic gadgets to copy and leak the paper which can be solved and passed on to the candidates sitting in the examination center since there is no preliminary screening of candidates.

4.2.10 There was no syllabus provided to the agency/candidates for written examination. The pattern of examination was provided to the agency/candidates in the name of the syllabus"

45. Similarly, under the heading "Result" the following were the observations of the Directorate of Vigilance:-

"6.2.1 Following has been observed from the list of selected candidates:

6.2.1.1 11 out of 11 General candidates, 4 out of 5 OBC candidates, 2 out of 3 SC candidates and 1 out of 1 ST candidate selected from the post are from Delhi Region. Out of 20 candidates selected 14 candidates are either from Haryana state or have obtained their qualifying degree from this state.

6.2.1.2 The candidates of Delhi region mostly belonging to the Haryana or studied there have scored up to 20% higher marks in the written exam in their respective categories compared to any other state/region.

6.2.1.3 6 out of 11 general candidates, 3 out of 5 OBC candidates were selected due to higher written marks and scored lower marks in interview.

6.2.1.4 Out of the 11 selected general candidates 7 candidates have secured less than 70 percentages of marks in their qualifying degree, out of which 6 candidates had 65% marks or below in their qualifying degree.

6.2.1.5 Out of 5 OBC candidates selected for the post 3 were having 63% or lesser marks in their qualifying degree but scored very high marks in written exams and lower marks in the interview.

6.2.1.6 Out of 20 successful candidates 8 candidates are from Maharshi Dayanand University and 3 candidates are from Kurukshetra University.

6.2.2 Following has been observed from the list of unsuccessful candidates:

6.2.2.1 The 12 out of 14 unsuccessful general candidates have secured marks in written exams ranging from 73 to 76. All these candidates were a good mix of all India students. Among these 12 unsuccessful general candidates 3 were having more than 80% of marks, 7 were having more than 75% marks and 2 were having more than 70% marks in their qualifying degrees.

6.2.2.2 The remaining two general candidates belonging to the Haryana scored very high marks in written exam but could not be selected as one candidate scored very low marks (5) in interview and the other candidate did not attend the interview. Both these candidates have secured less than 70% marks in their qualifying degree.

6.2.2.3 Similarly 2 OBC candidates belonging to the Haryana or studied there scored very high marks in written exam but could not be selected as 1 OBC candidate scored very low marks (4) in interview and the other candidate did not attend the interview. Both these candidates have secured less than 70% marks in their qualifying degree.

6.2.2.4 The only unsuccessful SC candidate belonging to the Haryana or studied there scored highest marks in SC category, but could not be selected due to very poor marks in the interview (11). The candidate has secured 72% marks in the qualifying degree.

6.2.2.5 The presence of the candidates of Haryana region or having qualifying degree from Haryana in the list of unsuccessful candidates is very low i.e., only 5 candidates out of 36 and are mentioned in Para 6.2.2.2, 6.2.2.3 and 6.2.2.4 of the report. These 5 candidates have scored up to 20% more marks than other candidates in their respective categories but were not selected due to very poor marks in interview or being absent. These candidates could have been selected if they had scored even 50% marks in the interview.

6.2.3 Majority of the general candidates finally selected for the posts appears to be predetermined candidates by virtue of their high scores in written examination. The analysis of the results

indicates that the marks of the written examination are manipulated to favour a set of candidates mostly belonging to Haryana state or studied there. These candidates are otherwise not academically sound and does not appear suitable for the post considering their credentials and scores in interview.

6.2.4 The five OBC candidates who have scored high marks in written examination for the five vacancies in OBC category also appears to be predetermined. This is not in line with the all India trend of scores which strongly suggest manipulation in written exam. However, two of them could not make it to final selection as one of the candidate scored only 4 marks in interview and one candidate could not attend the interview.

6.2.5 One of the SC candidates who have scored high marks in written exam for three vacancies in SC category also appears predetermined. However this candidate could not make it to final selection besides scoring higher marks in the written exam among SC candidates due to poor score in interview.

6.2.6 The candidates who have secured bare minimum of 5 to 10 marks out of 30 in the interview are also coming in the merit list for giving offer of appointment due to their higher percentage in the written test which is having weightage of 80%. However, no action was taken in this regard by department of HR.

6.2.7 The random checking of written test marks obtained by the candidates appeared for the interview was carried out by the team and it is observed that marks of one of the candidate Ms. Mona Taneja (Roll No. 110487) comes to 103 where as the marks obtained has been shown as 101 in the results provided by M/s. CPR. This creates doubt over validity of the results.

6.2.8 The majority of candidates selected are from Delhi Region in which Haryana state also falls. The Region-wise numbers of candidates who applied for the post and subsequently appeared for written test are as under which shows that 44% candidates appeared for written test are from Delhi Region. However, in the final selection is 90% candidates are from Delhi Region.

<i>Centre Name</i>	<i>Center Code</i>	<i>Total Applicant</i>	<i>% of total Candidates appeared for Written test</i>
<i>Ahmedabad</i>	<i>10</i>	<i>641</i>	<i>144 (22.06%)</i>
<i>Allahabad</i>	<i>7</i>	<i>948</i>	<i>222 (23.42%)</i>
<i>Chennai</i>	<i>4</i>	<i>3533</i>	<i>647 (18.3%)</i>
<i>Delhi</i>	<i>1</i>	<i>8438</i>	<i>1962 (23.25%)</i>
<i>Guwahati</i>	<i>8</i>	<i>219</i>	<i>36 (16.43%)</i>
<i>Hyderabad</i>	<i>5</i>	<i>3164</i>	<i>440 (13.91%)</i>
<i>Kolkata</i>	<i>3</i>	<i>1753</i>	<i>370 (21.11%)</i>
<i>Mumbai</i>	<i>2</i>	<i>1354</i>	<i>244 (18.02%)</i>
<i>Nagpur</i>	<i>9</i>	<i>1007</i>	<i>155 (15.39%)</i>
<i>Trivandrum</i>	<i>6</i>	<i>2004</i>	<i>206 (10.28%)</i>
<i>Total</i>		<i>23061</i>	<i>4426</i>

- *% of Delhi Region candidates among the candidates appeared for written test: 44%*

- *% of Delhi Region candidates selected among the candidates called for interview: 69.6%*

- *% of Delhi Region candidates finally selected i.e., 18 candidates out of 20 : 90%"*

46. On OMR sheets of the candidates, called for the interview, the following are the observations:-

"7.2.1 Following has been observed while analyzing the OMR sheets used for the written examination:

i. In the column of OMR sheets name, roll No. , booklet series

and Test Form No. etc., has been filled by the candidates in ink or pencil as per their desire, no clear cut instructions is given against these columns.

ii. The OMR sheet does not indicate the post code, date of examination etc.

iii. The OMR sheets supplied were not having Serial Nos.

7.2.2 It has been observed that Dte. Of HR has not ensured the following before/after conducting the exam:

a. Vetting of the answers keys from third independent agency.

b. Checking of sample test booklets/sample OMR sheets.

c. Reconciliation of final result with the OMR sheet.

7.2.3 The marking of the answers in the OMR sheet is done by the candidates by darkening the circles with HB pencils, which can be tempered/alterd with in absence of proper checks like obtaining a photocopy of the OMR sheets at the exam centers by AAI observers.

7.2.4 The table for 'A' series booklet shows that the candidates belonging to Haryana state or studied there or have scored higher marks in written exam have marked same options for the 10 wrong questions in this test booklet. It appears that these candidates were supplied with answer keys wherein some answers were deliberately marked wrong, probably to control the scoring of marks in the written examination. An extract of the table in respect of these candidates is as below:

<i>Roll No.</i>	<i>Name</i>	<i>Place of Residence</i>	<i>Marks obtained in written exam</i>	<i>Wrong answers</i>	<i>Sl. No. of wrong answers having same option of the candidates who have scored higher marks in written</i>

					<i>exam</i>
110487 <i>Successful</i>	<i>Mona Taneja</i>	<i>Karnal, Haryana</i>	101	17	21(4) 26(3) 29(2) 33(3) 45(4) 58(3) 72(4) 73(1) 82(3) 87(4) 102(2) – 10 <i>answers</i>
111479 <i>Successful</i>	<i>Vineet Asiwal</i>	<i>Bahadurg arh, Haryana</i>	88	32	21(4) 26(3) 29(2) 33(3) 45(4) 58(3) 72(4) 73(1) 82(3) 87(4) 102(2) – 10 <i>answers</i>
114555 <i>Unsuccessful</i>	<i>Sumit</i>	<i>Jind, Haryana</i>	96	24	21(4) 26(3) 29(2) 33(3) 45(4) 58(3) 72(4) 73(1) 82(3) 87(4) 102(2) – 10 <i>answers</i>
111091 <i>Successful</i>	<i>Sandeep Chaurasia</i>	<i>Kanpur, UP</i>	95	25	21(4) 26(3) 29(2) 45(4) 69(1) 72(4) 73(1) 82(3) 87(4) 102(2) 117(3) 119(1) 10 <i>answers</i>

7.2.5 The table for 'B' series booklet shows that the candidates belonging to Haryana state or studied there or have scored higher marks in written exam have marked same options for the 12 wrong questions in the test booklet. It appears that these candidates were supplied with answer keys wherein some answers were deliberately marked wrong, probably to control the scoring of marks in the written examination. An extract of the

table in respect of these candidates is as below:

<i>Roll No.</i>	<i>Name</i>	<i>Place of Residence</i>	<i>Marks obtained in written exam</i>	<i>Wrong answers</i>	<i>Sl. No. of wrong answers having same option of the candidates who have scored higher marks in written exam</i>
112292 <i>Successful</i>	Ms. Joyti Yadav	Gurgaon, Haryana	98	22	14(4) 22(2) 26(3) 38(4) 51(3) 62(4) 66(2) 72(3) 77(4) 98(2) 118(4) 119(I)-12 Answers
114864 <i>Unsuccessful</i>	Anurag Duhan	Rohtak, Haryana	99	21	14(4) 22(2) 26(3) 38(4) 51(3) 62(4) 66(2) 72(3) 77(4) 98(2) 118(4) 119(I)-12 Answers

7.2.6 The table 'D' series booklet shows that the candidates belonging to Haryana state or studied there or have scored higher marks in written exam have marked same options for the 11 wrong questions in this test booklet. It appears that these candidates were supplied with answer keys wherein some answers were deliberately marked wrong, probably to control the scoring of marks in the written examination. An extract of the table in respect of these candidates is as below:

<i>Roll No.</i>	<i>Name</i>	<i>Place of Residence</i>	<i>Marks obtained in written exam</i>	<i>Wrong answers</i>	<i>SI. No. of wrong answers having same option of the candidates who have scored higher marks in written exam</i>
111946	Apoorva	Tri Nagar, Delhi	101	19	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4), 112(2)-11 answers
112406	Sunil Phour	Panipat, Haryana	98	22	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4), 112(2)-11 answers
108082	Sachin Punia	Gurgaon, Haryana	100	20	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4), 112(2)-11 answers
114866	Mahesh Yadav	Rewari, Haryana	91	29	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4),

					112(2)-11 answers
109090	Vandana	Gurgaon, Haryana	92	28	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4), 112(2)-11 answers
107914	Manoj Choudhary	Delhi	103	17	8(3), 36(3), 39(2) 55(4) 78(4) 79(1) 82(4) 83(1) 86(2), 97(4), 112(2)-11 answers

7.2.7 It has been noticed that there is a relationship between the same questions in the different series. The findings are tabulated below:

SI. No. of the same questions in various series				
A	B	C	D	Remarks
21	14(-7)	46(+25)	31(+10)	All the questions are same bearing different serial number depending upon the series of the test booklet. The serial numbers shown are mathematically related.
26	19(-7)	51(+25)	36(+10)	
29	22(-7)	54(+25)	39(+10)	
33	26(-7)	58(+25)	43(+10)	
45	38(-7)	10(+25)	55(+10)	
58	51(-7)	23(+25)	8(+10)	
72	62(-10)	102(+30)	82(+10)	
73	63(-10)	103(+30)	83(+10)	

82	72(-10)	112(+30)	92(+10)	
87	77(-10)	117(+30)	97(+10)	

**Deduct 60 if total exceeds 60*

It is evident from the table that all the test booklet series are mathematically related and answers in different series can easily be computed with a single key.

7.2.8 On the basis of the above relationship comparison of the options of the same wrong questions among different series was carried out and the same tabulated below:

<i>Sl. No. of the same questions in various series</i>				
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>Remarks</i>
21(4)	14(4)	46(4)	31(4)	<i>The number within the bracket shows the Sl. No. of the option marked by the candidate. All these candidates have marked same option for these questions irrespective of their series for which the answers are wrong.</i>
26 (3)	19(3)	51(3)	36(3)	
29(2)	22(2)	54(2)	39(2)	
33(3)	26(3)	58(3)	43(3)	
45(4)	38(4)	10(4)	55(4)	
58(3)	51(3)	23(3)	8(3)	
72(4)	62(4)	102(4)	82(4)	
73(1)	63(1)	103(1)	83(10)	
82(3)	72(3)	112(3)	92(3)	
87(4)	77(4)	117(4)	97(4)	
<i>Ms. Mona Taneja</i>	<i>Ms. Jyoti Yadav</i>	<i>Sh. Manu Yadav</i>	<i>Sh. Manoj Choudhary</i>	

The table shows that the candidates belonging to Haryana state or studied there or have scored higher marks in written exam

have marked same options for the 10 wrong questions irrespective of the series. Thus it can be inferred that predetermined candidates were supplied with answer keys during or prior to the examination resulting in same options for wrong answers. Such type of similarity while marking one of the option out of four is abnormal which cannot take place without outside help during or prior to examination."

47. Against test booklet/answer keys, the following were the observations:-

"8.2.1 On examination of the test booklets series A, B, C & D provided by the HR, following is observed:

a. No column was provided for mentioning the Roll No. hence; there exist possibility to exchange the test booklets for copying and also providing the answers from outside.

b. Test Date and Post code was not mentioned.

c. There was no instruction on wrong answer or negative marking.

d. Instruction for use of mobiles/calculators or electronic gadgets is not mentioned in the test booklet.

e. No instructions were given in the booklet for filling up the OMR sheets.

f. The used test booklets were sought from HR directorate but the concerned officials have no clue whether the test booklet are given to the candidates after completion of written examination or still available with the recruiting agency. This confirms that Directorate of HR did not pay much needed attention to the recruitment process.

8.2.2 The pattern of the question paper for IT discipline is kept at par with non technical disciplines i.e., 50% questions from the IT discipline and 50% from General Knowledge/Aptitude/Reasoning/English etc. Whereas in the other technical disciplines 70% of the questions were from technical side and 30% questions were from General

Knowledge/Aptitude/Reasoning/English etc. The treatment of IT as non technical discipline is not justified and it appears that no thought was given for deciding pattern of question paper for this highly technical discipline.

8.2.3 The questions asked in the written test were randomly checked and following has been noticed: 8.2.3.1 Among general questions two numbers of questions were found wrong. (Q. No. 2 & 21 in series A', Q. No. 55 & 14 in series 'B', Q. No. 27 & 46 in series 'C' and Q. No. 12 & 31 in series 'D') as there is no correct answer in first question and in the second question the question asked itself is wrong.

8.2.3.2 On perusal of the answer keys submitted by the agency to Dte. Of HR in a sealed cover, it is seen that same is not certified or countersigned by the authorized signatory.

8.2.3.3 It has also been observed from the answer keys that no correct answer is given against one question i.e., Booklet Series A-Q No. 14, B-Q. No. 7, C-Q.No. 39 & D-Q. No. 24. However it is found that the agency has evaluated the OMR sheets by taking option 3 as correct answer for this question. This shows that the agency's casual approach during evaluation."

48. The final conclusion of the Directorate of Vigilance is as under:-

"Conclusion

From the observations made through stage wise analysis brought out in previous sections, following conclusions can be made:

9.1 The recruitment process has been manipulated to favour a set of candidates belonging to Delhi region especially Haryana state or those candidates who have obtained their qualifying degree from this state. The higher written marks of these candidates with their poor credentials do not match with the average marks obtained by all India candidates with better credentials. Further it has been noticed that a large percentage of their options of wrong questions matches with each other which is abnormal while marking one out of four options. Thus it can be concluded

that their results were predetermined by one of the following possible manipulation:

9.1.1 These candidates might have been supplied with the answer keys prior to/during the examination.

9.1.2 The OMR sheets were left blank by the candidates and the same were filled up later o before declaration of results and these concocted answer sheets (OMR) were submitted to AAI to support the predetermined result of the written examination.

9.2 The agency for conducting the written exam was hired by falsification of the facts, eliminating competition and without verifying the credentials. Further the agency was given free hand in the conduct of the examination and no proper checks and balances were put in place, therefore involvement of the concerned HR officials in the manipulation cannot be ruled out.

9.3 The integrity of the results provided by the agency is also doubtful in view of the wrong questions in the test booklets and discrepancies in the answer keys like no answers for one question and error in marks obtained by one of the candidate i.e., Ms. Mona Taneja.

9.4 The recruitment agency M/s. CPR does not falls under the purview of the Corporate Vigilance department, therefore detailed investigation of this case could not be carried out. However, detailed investigation on irregularities in the appointment of the agency may be ordered for fixing responsibility of the concerned HR officials."

19. In the main, the appellants' submission with respect to the correctness of the impugned judgment are – firstly that no material was shown in the first instance by the AAI that the decision to redo the entire selection process was based upon any cogent evidence. Rather, the so-called conclusions of the Vigilance Committee report were sketchy and vague, in any event, insufficient for a sustainable decision. The second argument is that the methodology adopted by the AAI in deciding that there were widespread

irregularities or manipulations cannot stand the test of law. Here, it is submitted that the sample drawn for the State, i.e. the results of candidates appearing in one particular discipline could not have been used for invalidating selections of the entire 558 vacancies for which tests were held in different centres on different times. In short, this argument is that the sample drawn was on an unscientific basis which led to a grossly distorted conclusion unsustainable on the test of Article 14 of the Constitution of India. The last argument on the factual materials and the findings are that the learned Single Judge overlooked the fact that the same recruitment process included selection to the Junior Executive (Fire Services). Yet, the selected candidates for these posts were appointed, thus pointing to a grossly discriminatory approach.

20. So far as the first submission goes, the Court, at the outset notices that whenever unfairness in a selection or recruitment process is alleged, the recruiting agency is expected to conduct a comprehensive analysis. In this case, undoubtedly, at the early stages, there was no reason for the AAI to suspect irregularity. However, when the results were prepared and presented to the competent authority, i.e. Chairman, he noticed that the selection indicated a lopsided geographical result. This triggered a suspicion and an investigation and consequently report by a Committee. The Committee's recommendations and its factual analysis is contained in a 20-page report the conclusions of which have been extracted. There are certain important conclusions which have not been disputed by the appellants. Firstly, that the agency's selection for the purpose of conducting the written test, was irregular. The normal process apparently was not followed by the HR

Directorate. This is notwithstanding that the agency had been earlier involved in the recruitment process.

21. The second and perhaps the most important observations of the Committee was that as against a large number of candidates who had in fact applied, Roll Numbers were made available and availed of by a very insignificant percentage – ranging between 19 to 25%. In the case of Delhi Region, however, the percentage was far higher, i.e. 44%. This itself was an important aspect, because the making available information about the roll numbers etc, i.e. information dissemination about the recruitment process is the foundation of fairness. If those from a particular Region were more favoured, the access to the selection process become questionable. In other words, if a defective method is adopted to intimate candidates about their eligibility for selection, the process would inevitably start with a taint.

22. During the course of the hearing, AAI had produced materials in the form of an elaborate analysis which formed the basis for the tabular charts extracted in the judgment. These bring out in stark relief the fact that an overwhelmingly large percentage of candidates from the Delhi Region succeeded in the selection. The Delhi Region undoubtedly had a higher percentage in the participation in most of the disciplines yet the result were disproportionately weighed in their favour – between 80 to 90% success in almost all disciplines.

23. The obligation to separate genuine candidates and ensure that they do not suffer on account of irregularity practiced by others or the taint attached to a part of the selection process is undoubtedly on account of Article 14. Yet, if in a given case, the authority or the recruiting authority or State

agency has material which points to the fact that separating grain from chaff is an impossible task in an ultimate analysis, its decision not to proceed with the recruitment cannot be faulted. The larger goal of ensuring equality of access to all in matters of public employment by Article 16 is to be subserved by State and every agency under it. If in the course of its investigation, keeping in mind the limited nature of resources available with it, it is unable to separate genuine candidates from those who actually practiced use of unfair means to get selected, the Court cannot insist that there had to be greater or more searching scrutiny. In other words, in judicial review, the sufficiency of materials to back a decision of the executive Government is always to be kept in mind having regard to the nature of the decision and the subject matter involved. Here, a large number of candidates appeared for 558 vacancies. The resources and time need to conduct a detailed and close scrutiny of every answer sheet, possibly would have equalled, if not surpassed the resources needed to hold the selection test. In other words, if 'X' amount was to be spent for holding the recruitment process, and the amount expendable, or expected to be spent for investigation, was three or five times 'X', the Court cannot insist that in the absence of such searching scrutiny, the entire result could not be cancelled. In other words, the question of sufficiency of material is always guided by the decision of the subject matter and the nature of the decision taken.

24. A balance of competing interests – one of fairness in the selection process, and the other of fairness to notify candidates must always be struck. In this case, the balance was struck in favour of former – to an extent, at the expense of the latter. At the same time, AAI made sure that those eligible in

the first instance and who had competed in the earlier recruitment initiated in 2012 were not excluded on account of its decision. It is well-known that the selection of candidate does not clothe with him the right to public employment [refer *Sankarsan Dash (supra)*]. Taking into consideration all these facts and the circumstances, and the elaborate nature of analysis by the learned Single Judge, who concluded that the decision of the AAI was not arbitrary, this Court is of the opinion that the impugned judgment should not be interfered with. The appeals are consequently dismissed.



**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 31, 2016