

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

+ **WRIT PETITION (CIVIL) No. 11043/2016**

% **Reserved on:** 25th August, 2017
Date of Decision: 8th September, 2017

NITIN KUMARPetitioner
Through Mr. H.K. Chaturvedi, Advocate.

Versus

COMMISSIONER OF POLICE & OTHERSRespondents
Through Mr. Anuj Aggarwal, ASC for GNCTD.

WRIT PETITION (CIVIL) No. 11044/2016

AVINASH KUMARPetitioner
Through Mr. H.K. Chaturvedi, Advocate.

Versus

COMMISSIONER OF POLICE & OTHERSRespondents
Through Mr. Anuj Aggarwal, ASC for GNCTD.

WRIT PETITION (CIVIL) No. 11045/2016

ASHISH KUMARPetitioner
Through Mr. H.K. Chaturvedi, Advocate.

Versus

COMMISSIONER OF POLICE & OTHERSRespondents
Through Mr. Anuj Aggarwal, ASC for GNCTD.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The three aforesaid writ petitions impugn the order dated 16th July, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 1899/2016.

2. The dispute pertains to recruitment to the post of Head Constable, Assistant Wireless Operator/Tele Printer Operator (AWO/TPO) by way of direct recruitment vide two advertisements published in February, 2013. Initially, 142 vacancies of Head Constable, AWO/TPO were advertised, which figure was revised to 475 with the stipulation that the vacancies were subject to further change.

3. The applicants were first required to undergo a Physical Endurance Test, which was conducted in February, 2014 and those qualifying had appeared in the written examination held in March, 2014. In May, 2014 results were announced and 2453 candidates i.e. five times the number of vacancies advertised, were declared as qualified. These candidates underwent a trade test in August, 2014 and a typing test in October, 2014. The final result selecting 381 candidates with 15 candidates in waiting list was declared in December, 2014. The petitioners herein, who were the applicants before the Tribunal, were declared successful in the result declared in

December, 2014. Thereafter, police verification and medical examination were conducted between February and April, 2015, but appointment letters were not issued.

4. Another list of 247 candidates who had qualified in the written test, was published on 30th September, 2015 and these candidates thereafter had undertaken the trade test and typing test. On 16th May, 2016, the revised list of selected candidates, 376 in number, was published. As noticed above, in the first list published in December, 2014, 381 candidates had been selected and 15 others had been placed on the waiting list against non-joining of selected candidates. In the revised result declared on 16th May, 2016, 53 out of 381 of the earlier selected candidates, including the three petitioners, did not figure.

5. Aggrieved, the petitioners made a representation dated 21st May, 2016 and thereafter filed the aforesaid OA praying for quashing and setting aside the revised final result of selected candidates published on 16th May, 2016 and for direction to the authorities to consider and appoint them as Head Constable, AWO/TPO.

6. The respondents have explained the reason for the publication of the revised or second list. On the basis of complaints received pertaining to the questions, the answer key, and wrong evaluation, an expert committee was constituted to look into the anomalies. The expert committee found errors in nine questions, of which six were deleted/cancelled and declared null. The answer key of three questions was changed. On the basis of the recommendations of the expert committee, answer sheets of each candidate were re-evaluated. In

respect of six deleted questions, each candidate was awarded one mark. In view of the revised marks on revaluation, 247 new candidates were selected to undergo the trade test and typing test.

7. The Tribunal has rejected the challenge to the findings of the expert committee, revaluation, etc. observing that revaluation exercise was warranted and justified once six questions were deleted, and the answer key of three questions was changed. Preparation of the revised merit list, in terms of the revaluation, was justified and mandated.

8. The petitioners have challenged grant of additional marks to each candidate for the six deleted questions as arbitrary and contrary to law. The contention is that the candidates who had ‘correctly’ answered the questions have been equated and erroneously treated at par with those who had not answered or had given incorrect answers. There were ninety multiple choice questions in total and each question was assigned one mark. Candidates had four options to choose from and there was no negative marking. Even if there were two correct answers to a question, a candidate who had marked either of the two correct answers was entitled to one mark. It was unjust and unfair to give an additional mark to all candidates, whether or not they had attempted to answer the six deleted questions.

9. The Tribunal in the impugned order has elaborately dealt with the said contention making reference to each question and the anomaly noticed. We are entirely in agreement with the findings of the Tribunal on the said aspects, and for the sake of clarity and as the

reasoning is sound and acceptable, we would reproduce the relevant portion of the order of the Tribunal, which reads:-

“6. The applicants have stated that Question No. 55 in Set-C reads as follows:-

“Who among the following was 10th President of India?

- A) Giani Zail Singh
- B) Pranab Mukherjee
- C) Neelam Sanjeeva Reddy
- D) R. Venkataraman”

They had answered ‘A’ as the correct option. In the pre-revised answer key, the respondents had also taken this as the right answer since Giani Zail Singh was actually the 10th President although he was Acting President. However, now the Expert Committee has cancelled this question on the ground that 10th President of India was Sh. K.R. Narayanan and since this option was not available in any of the 04 choices given to the candidates, the question deserves to be cancelled. Learned counsel for the applicants argued that the candidates were required to choose the correct option only from the choices given. Since Sh. K.R. Narayanan was not an option, candidates had rightly assumed that the correct answer would be Sh. Giani Zail Singh even though he was only Acting President. It would, therefore, be unfair to cancel this question and not give any benefit to the applicants, who had rightly answered the questions on the basis of options given.

7. Next, the applicants have challenged the findings of the Committee regarding Question No. 59 of Set-C, which reads as follows:-

“In which year was the land acquisition act passed?

- A) 2000

- B) 2013
- C) 2014
- D) 1894”

7.1 The respondents had initially taken option ‘C’ as the right answer but later on revised it to option ‘D’. The reasons recorded by the Expert Committee are as follows:-

“Land Acquisition Act was passed in the year 1894. Another Act was passed in the year 2013, which was named “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Hence, the correct answer is 1894.”

7.2 The applicants have submitted that the 2013 Act was popularly called the Land Acquisition Act. Moreover, the Land Acquisition Act was first passed in 1870 as Act No. X of 1870 passed by the Governor General of India. They have even attached a copy of this. The applicants have submitted that the Land Acquisition Act, 1870 was repealed by an Act of 1894. It was further repealed by the 2013 Act. As such, this question deserves to be cancelled.

8. Next, the applicants have challenged the Committee’s findings regarding Question No. 65 in Set-C. The aforesaid question reads as follows:-

“Find the odd one out

- A) Pear
- B) Apple
- C) Litchi
- D) Orange”

The Expert Committee has cancelled this question because they felt that more than one character answer was possible. Thus, orange was possible as correct answer because it was

the only citrus fruit whereas litchi was also possible as correct answer because it was the only fruit with a single seed. The applicants' contention is that in various other competitive examinations, such as Allahabad Bank Clerical Examination, 2009 (Question No. 7), Bank PO Exam 2003 and Bank of PO Exam, 2004 the correct answer to this question has been taken to be 'orange' being the only citrus fruit. Thus, the respondents herein should also have followed the same instead of cancelling the question.

8.1 Further, the applicants have challenged the findings of the Expert Committee on Question No. 22 of Set-C. It reads as follows:-

“If two pieces of ice are mutually pressed against each other then these pieces stick because

- A) at higher pressure the melting point of ice decreases.
- B) at higher pressure the melting point of ice increases.
- C) at higher pressure the melting point of ice firstly decreases and then increases.
- D) there exists no relation between the pressure and melting point of the ice.”

8.2 The respondents had initially taken option 'C' as the correct answer but later on decided to cancel it on the recommendations of the Expert Committee. The Expert Committee has given the following reasons for cancelling the question:-

“The correct answer would be “with higher pressure the melting point of ice would decrease. As a result, some ice at the joint would melt. The re-adjustment of water molecules would momentarily cause lowering of pressure due to which melting-point would increase and the water at the joint would convert to ice again, thus,

making the two pieces of ice stick.” Options ‘A’ & ‘C’ are both nearly correct options, but, not entirely correct either. Hence, the question needs to be cancelled.”

8.3 The applicants have submitted that the Expert Committee has gone wrong in arriving at the aforesaid conclusion. They have relied on the text authored by Dr. K.L. Gomber and K.L. Gogia-Pradeep’s Fundamental Physics (Class XI) as also on Wikipedia to say that this process is called ‘Regelation’ and, therefore, option-C should be regarded as the correct answer.

9. Next, the applicants have challenged the findings of the Expert Committee regarding Questions No. 14 and 68 of set-C. The same is reproduced as hereunder:-

“Q.14) Find a number such that when

15 is subtracted from 7 times the Number, the result is 10 more than Twice the number?

- A) 5
- B) 6
- C) 4
- D) 8

Q.68) Pointing towards a boy, Veena said, “He is the son of my grandfather”. How is that boy related to Veena?

- A) Uncle
- B) Brother
- C) Cousin
- D) None of these

Q.14) एक संख्या के 7 गुने से 15 घटाने पर और उस संख्या के 2 गुने से 10 जोड़ने पर जो परिणाम आएगा वो है:

- A) 5
- B) 6
- C) 4
- D) 8

Q.68) एक लड़के की ओर इंगित हुए हुए वीणा ने कहा, “वह मेरे दादा के इकलौते बेटे का बेटा है”. वीणा उस लड़के से कैसे सम्बंधित है?

- A) चाचा
- B) भाई
- C) चचेरा
- D) इनमे से कोई नहीं

9.1 The Expert Committee has recommended that English and Hindi versions of these questions do not match. Hence, they deserve to be cancelled. The applicants have submitted that in the instructions given to the candidates on

the first page of the question booklet itself following is mentioned:-

“Note: In case of variation of any kind in the English and Hindi versions of any question(s), English version will be considered as final.

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11. The respondents have disputed the assertions of the applicant regarding composition and the findings of the Committee. They argued that the entire selection process had been conducted departmentally. Even the question paper setter was a police officer. The Committee comprised of officers, who were not only senior to the paper setter but were also distinguished officers. Further, they asserted that it was not necessary for them to form a Committee comprising of academicians or special experts as this was nowhere prescribed in the rules. In a similar case regarding recruitment of Constable Executives, on the directions of this Tribunal they had constituted Committee of police officers only.

11.1 As regards the findings of the Committee the respondents have stated that as far as question No. 55 of Set-C is concerned, the question asked was who was the 10th President of India. The candidates were required to name the 10th President of India. A simple google search would reveal that the 10th President of India was Sh. K.R. Narayan (sic. Narayanan). However, since his name did not figure in the 04 options given to the applicants, the Committee had rightly recommended that this question should be cancelled.

11.2 Regarding Question No. 59 of Set-C the Committee has opined that the Land Acquisition Act was passed in the year 1894. The Act passed in 2013 was for fair compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement of affected parties. Hence, the correct answer to the question was 1894. The

respondents have also produced at the time of hearing a document to show that the 1894 Act was called Act No. 1 of 1894. Hence, according to them, the Committee has rightly recommended that the correct answer was 1894. Hence, option-D should be taken to be correct.

11.3 Regarding Question No. 65 the Committee has given reasons why both orange and litchi can be regarded as correct answers, one being the only citrus fruit in the lot and the other being the only single seed fruit in the lot. The applicants' counsel argument that orange be regarded as correct answer as has been done in some other competitive examinations cannot be accepted.

11.4 As far as Question No. 22 of Set-C was concerned, the Committee found that two answers were nearly correct and hence recommended cancellation of the question. Detailed reasons have been given for doing so, which have been reproduced in the earlier part of the order.

11.5 As far as Question No. 68 and 14 are concerned in which the Committee had found mismatch in the English and Hindi versions, the respondents argued that a mere reading of these questions would reveal that question asked in English versions was different from the question asked in the Hindi version. The applicants have not disputed that there was variation. They have, however, stated that as per instructions given in the first page of the booklet itself, English version should have been relied upon. By not doing so, the respondents have changed the rules of the game midway and were, therefore, hit by directions of Hon'ble Supreme Court in the case of **K. Manjusree** (supra). The respondents argued that they have not changed the Scheme of the Examination, which was the issue in **K. Manjusree's** case (supra). Hence, it cannot be said that they were going against the directions of Hon'ble Supreme Court as given in the aforesaid case. In their support, they relied on a judgment of Hon'ble High Court of Madras in the case of **D. Shylaja Vs. The Secretary to Government** (Writ Petition No. 14587/2004) dated 15.06.2004 in which finding a

difference in English and Tamil versions, the Hon'ble High Court had upheld the decision of the university to cancel the questions after noting that from the answer sheets, it would not have been possible to decipher as to which candidate had attempted the English version of the question and which candidate had attempted Tamil version. The respondents contended that the instant case was squarely covered by the aforesaid judgment.

12. We have heard both sides and have perused the material on record. In our opinion, following two issues arise for our consideration:-

(i) Whether the respondents were justified in ordering re-evaluation of answer sheets of the written test?

(ii) Whether the findings of the Expert Committee and the re-evaluation done on the basis of the same leading to preparation of revised merit list are acceptable or not?

12.1 As far as the first issue is concerned, it is clear from the records of the respondents that they received representation from certain candidates that there were discrepancies in the answer key as well as evaluation of certain questions in the written test. Finding some substance in the complaint, they sought comments from the paper setter and thereafter examined the issue in details. They then decided to constitute a Committee of Senior Police Officers to examine whether there were discrepancies in certain questions asked from the candidates in the written test. The Committee found that 06 of the questions needed to be cancelled and in 03 questions the answer given in the answer key needed to be changed. We find that the applicants have disputed findings of the Committee regarding 06 of the 09 questions. They have not questioned the findings of the Committee in other 03 questions. In one such questions (Question No. 52 of the Set-C) the paper setter answer according to which the model answer key was set was option-B whereas the Committee found the correct answer to be option-C. Similarly, for

Question No. 19, the Committee found the correct answer to be option-B instead option-A given in the model answer key by the paper setter. Again for Question No. 29 while the model key had suggested option-D as the answer whereas the Committee had recommended cancellation of the question finding none of the options given to be correct. These findings have not been questioned by the applicants, meaning thereby that the applicants have themselves accepted that at least in these three question there were discrepancies. It cannot be disputed that even if there was deficiency in one question then re-evaluation would alter the merit list. Herein discrepancies in at least 03 questions have been accepted by the applicants themselves leading to the conclusion that re-evaluation was definitely warranted. Hence, the respondents cannot be faulted for not acting on the earlier merit list and ordering re-evaluation of the answer sheets of the written test to prepare a revised merit list. This is irrespective of the findings given by the Committee in the remaining 06 questions.

12.2 As far as the findings of the Committee are concerned, we are not convinced by the arguments advanced by the applicants to dispute the same. Thus, for Question No. 55, the applicants have contended that Sh. Giani Zail Singh was the right answer as he was the 10th President of India even though he was only “Acting”. We do not know when Sh. Giani Zail Singh acted as President of India as he was the Home Minister of India and it is the Vice-President who acts as President in absence of the President. In any case, we agree with the respondents that the 10th President of India was Sh. K.R. Narayanan and, therefore, the findings of the Committee are, in our opinion, correct. Similarly, for Question No. 59, we are not convinced by the argument of the applicants that 2013 be taken as the right answer. It is common knowledge that the Land Acquisition Act was passed in 1894. The applicants’ contention that an Act was also passed in 1870 cannot be accepted because 1870 was not one of the options given in the question. Hence, Committee is right when it has opined

that Option-D i.e. 1894 be taken as the right answer. Again, we agree with the logic advanced by the Committee that for Question No. 65 both orange and litchi can be regarded as correct answer. We are not convinced by the argument of the applicants that since in several other competitive examinations orange has been taken as the right answer in this question, the same should be followed here. Candidates appearing in this test may or may not be aware of what was done in other competitive examinations. They were not expected to answer the question on the basis of practice followed in other selections.

12.3 Next the applicants have questioned the findings of the Committee regarding Question No. 22. They have relied on the text authored by Dr. K.L. Gomber and K.L. Gogia, the extracts of which they have annexed with their annexures. We have perused the material presented. According to this, the process of melting under pressure and then reprocessing is called regelation. However, the material presented does not in any way lead us to conclude what the right answer out of the 04 options given in Question No. 22 would be. The finding of the Committee that two answers were nearly correct appears to be justified and is backed by sound reasoning reproduced in earlier part of the judgment.

12.4 Lastly, the applicants have disputed the findings of the Committee regarding Question Nos. 68 and 14 in which there was mis-match in English and Hindi versions. The applicants have argued that in terms of the instructions given in the question booklet English version should have prevailed in the event of variation between two versions. However, on examining this issue, we find that this was not a case of variation. Rather the question asked in English version was entirely different from the question asked in Hindi version. Thus, in Question No. 68 in the English version, the relationship of the boy to the Veena has been asked for whereas in the Hindi version relationship of Veena to the boy has been asked. Similar is the situation in

Question No. 14 which becomes obvious by mere reading of the same. Under these circumstances, we are of the opinion that the Committee has rightly recommended that these 02 questions be cancelled. If applicants' contention is accepted and English version is allowed to prevail, it would be grossly unfair to those applicants who attempted questions in Hindi. This is because they were not expected to read the English version and their answer would have been marked wrong even if they had answered the question correctly as per the Hindi version.

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10. On the aforesaid aspect, we do not think the finding of the Tribunal upholding the findings of the expert committee could be faulted. These findings are cogent and refer to specific and relevant facets necessary to answer the question. The findings of the committee are not perverse or absurd, which would merit interference. The submission that the expert committee consisted of three police officers, and that the respondent authorities have not relied on or sought the opinion from academicians, has to be rejected once we accept that the reasoning given by the committee was compelling, rational, and objective.

11. Objective type multiple choice questions must be carefully selected to ensure that the question does not have more than one correct suggested answer. In case of more than one correct suggested answer, confusion is bound to arise and candidates may falter, either by marking a wrong option or by not attempting to answer the said question. In the present case there was no negative marking, but regardless and nevertheless, it would be unfair to expect a candidate to

dwell and spend time on a question when options or suggested answers are confusing and faulty. A sharp candidate would, more than likely, skip the question and go on to the next question. In such cases, the benefit of doubt or error should normally be granted to candidates who have either marked the incorrect option or not attempted to answer the question. When benefit in such circumstances is given by the authorities themselves, others should not protest unless the action of the authorities is *mala fide* or was illogical and could be categorized as arbitrary. The choice exercised should not affect sanctity of the examination. We would hesitate to hold that sanctity has been compromised in the present case. It is no doubt possible that the questions could have been treated as zero mark questions, however in such event as well, the final result declared in December, 2014, would have required recompilation. Possibly, many included in the first list of 2453 candidates who had qualified in the written examination, would not have made it in the revised list. The respondents, in the present case, had applied the criteria of giving one mark to each candidate whether or not the candidate had attempted the question. In this manner, each candidate has been treated alike.

12. At times, two or more options are available to the authorities to deal with the situation which has arisen. Each option can be just and proper. As long as the choice adopted by the authorities, in their wisdom, is fair, just, has taken into account relevant facets, and has ignored inconsequential and irrelevant aspects, a Writ Court or a Tribunal would not interfere. The Court or the Tribunal does not

exercise the right of choice but exercises the power of judicial review, which focuses on the decision making process and not the decision itself. This view has been applied and noted by this Court in Writ Petition (C) No. 8055/2015, ***Prabha Devi and Others versus Government of NCT of Delhi and Others***, decided on 12th May, 2016, where reference was made to several judgments of the Supreme Court and the Delhi High Court and it was observed as under:-

“19. A reading of the aforesaid judgments would reflect that there are four possible options available to the authorities, when they are confronted with the situation where the question(s) included in the multiple choice objective type tests is found to be incorrect, ambiguous or the answers themselves are found to be incorrect, ambiguous or capable of dual answers. The options are; (i) the question can be deleted and treated as a zero mark question; (ii) the question though deleted, each candidate is awarded marks as if the answer was correct and without negative marking; (iii) the question is not deleted and the candidates who have given the right answer are awarded marks, but there is no negative marking; and (iv) if there are two correct suggested answers, candidates who have given any of the two answers are awarded full marks. In the latter case, possibly negative marking may not be mandated. The aforesaid options can be divided into two categories, where the question is deleted, and the question is not deleted but option Nos. (iii) or (iv) are exercised. Which of the two categories would be applicable would depend upon the question and the suggested answers. The option to be selected has to be question-wise, i.e., with reference to each question. Lastly, while selecting the option, the authorities must take into consideration two factors, first, the sanctity of the selection process should be maintained and second, the students/candidates who have appeared should not suffer objectionable prejudice and disadvantage. In the

present case, the authorities have exercised the first option, the question has been deleted and treated as zero mark question. It is possible to urge that award of additional marks, i.e., the second option is the most suited and preferred option, for least possible prejudice is caused to the students/candidates when an additional mark is awarded. However, it cannot be said that the said option is the only valid and acceptable option or when the said option is adopted, no prejudice is caused to any students/candidates. Prejudice may still be caused because students who have correctly answered the question in spite of ambiguity, etc., are denied the benefit of the correct answer. As held in *Abhijit Sen* (supra), all the students/candidates were placed in a similar position and had felt and faced the same difficulty. In *Kanpur University* (supra) and *Gunjan Sinha Jain* (supra), the Supreme Court and High Court have preferred to adopt the first option, i.e., to delete the question and treat the question as a no mark question. Hence, the exercise of the first option per se would not be wrong or contrary to law. The onus in such cases would be on the candidate to show that deleting the question and exercise of the first option has caused prejudice. To establish the prejudice, the question and suggested answers, the model key and the answer given by the candidate have to be adverted to and examined. Only when the answer given it is observed, is correct or should be accepted, that additional mark(s) can be awarded. In the present case, the petitioners have alleged prejudice, but have not been able to demonstrate and show how and in what manner the method adopted, i.e., treating the two questions as zero mark questions, is required to be interfered. It would not be appropriate to reject and overturn the criteria/option exercised, by referring and relying on the general perception that the second option is the most fair and just criteria. The power of judicial review is not an alternative or an appellate power. It is only when there is an error in the decision making process, which has to be shown and established by the petitioner, that the power is exercised.”

13. Read in this light, we do not think the first contention of the petitioner has any merit and, therefore, to this extent we are not inclined to interfere with the impugned order.

14. In the present case, five times the number of candidates against the vacancies were to be called for trade and typing tests. In case of candidates securing same cut-off marks in the written test, all of them were treated as eligible. While publishing the first list of eligible candidates and the second list after the written examination, the respondents did not breach the said mandate as stipulated by the Standing Order No. Rec.-6, Standing Order for Recruitment of Assistant Wireless Operator/Tele-Printer Operator (Head Constable) in Delhi Police. Breach of this mandate would have possibly invited objections for it would have meant a change in the terms of selection. In view of the aforesaid position, we would reject the contention of the petitioners that the revised list of 2382 candidates, based on revaluation of answer sheets, could have or rather should have exceeded the stipulation of five times the number of candidates against vacancies should be called for trade and typing test. If the contention of the petitioners is accepted, it would be in breach and violation of the aforesaid stipulation of the standing order for recruitment. This would amount to change in terms of selection during the course of the selection process. Others prejudicially affected would have protested and objected to the same.

15. As there were 71 open Scheduled Castes vacancies, the number of candidates required to be called for the trade and the typing tests in

the said category was to be restricted to 355 in the result declared in May, 2014. The cut-off marks, by default, in the written test, in the Scheduled Caste category, was fixed at 59. 388 candidates had secured 59 marks or more and in terms of the advertisement were eligible to participate in the trade and typing test. The petitioners had secured 59, 60, and 62 marks, respectively, in the written test and were, therefore, called for trade test alongwith 2450 other candidates. 1581 candidates had qualified the trade test and were asked to appear for the typing test, which carried 10 marks. The final list published in December, 2014 was based on the marks obtained in the written test, which carried 90 marks, and the marks obtained in the typing test, which carried 10 marks. The list comprised of 381 successful candidates. There were 71 vacancies in the open Scheduled Castes category. 55 candidates had qualified in the said category and were selected. 16 vacancies were to be carried forward on account of non-availability of scheduled caste candidates.

16. In view of the re-calculation the second revised list, on the basis of written examination, was published on 30th September, 2015. The revised list was restricted to five times the number of vacancies. Post re-valuation, 2382 candidates were found qualified. 247 candidates, who were earlier disqualified and had secured lower ranks, had moved up, and 318 candidates, who had earlier qualified the written test, were found disqualified and had moved down. 318 candidates, therefore, were treated as disqualified despite having appeared in the trade and typing test. Of these 318 candidates, 145 candidates, including the

petitioners, belonged to the Scheduled Caste category. On the basis of the re-valuation, the revised cut-off marks in the written test was increased from 59 to 63 marks in the Scheduled Caste category. Nitin Kumar, Ashish Kumar, and Avinash Kumar, upon re-valuation, had secured 62 marks, whereas the cut-off was 63 and therefore the petitioners had not made it to the cut off list. After conducting the trade and typing tests and on the basis of marks obtained by the qualified candidates, a revised selection list was published. As per the said list, for 71 open vacancies in the Scheduled Castes category, 51 candidates were selected. The unfilled vacancies, 20 in number, were carried forward.

17. Learned counsel for the petitioners has drawn our attention to the decision of the Supreme Court in Civil Appeal No. 4794/2012, ***Pallav Mongia versus Registrar General, Delhi High Court and Another*** and Division Bench decision of this Court in ***Gunjan Sinha Jain and others versus Registrar General, High Court of Delhi***, 188 (2012) DLT 627 (DB). In ***Gunjan Sinha Jain*** (supra), the Delhi High Court held that legitimately the top candidates after re-valuation should be declared as having qualified even if there was an earlier merit list of top candidates. However, in the said case, it was observed that the requirement and stipulation relating to the number of candidates should be moderated keeping in view the requirements of justice, fairness, and equity. In this manner, those who were declared qualified would retain their declared status even if they were lower down and had not qualified after re-valuation. The Court declared that

the final number of qualified candidates may, therefore, exceed the figure, but this should be accepted. However, the case of ***Pallav Mongia*** (supra) is slightly different. The Supreme Court noticed that the candidates in the first eligible list had not been excluded from the list of eligible candidates for appearing in the main examination, even if the candidate had come down in rank in view of deletion of some question or change in the model answer key. In these circumstances, it was directed that other candidates, who pursuant to re-valuation, had secured more marks than the last candidate should be allowed to appear in the main examination vide revised list. These candidates would be treated as qualified and included in the list. The decision in ***Pallav Mongia*** (supra) has no relevance to the present case. In ***Sumit Kumar versus High Court of Delhi and Another***, W.P. (C) No. 3453/2016, decided on 9th May, 2016, after referring to these two decisions, it was left to the High Court Administration to adopt an appropriate and proper method after deleting certain questions and issue of the corrigendum. However, the decisions passed in ***Pallav Mongia*** (supra) and ***Gunjan Sinha Jain*** (supra) would be kept in mind.

18. When we turn to the order passed by the Tribunal, in the present case, we find the Tribunal was conscious and aware of the problem and, therefore, had issued the following directions:-

“15. At the same time, we cannot over look the fact that the applicants had been subjected to a long and drawn out process of selection lasting 2 ½ years and were on the verge of being appointed when the respondents decided to prepare

a revised merit list. As per respondents' own submission 53 persons, who figured in the earlier merit list, have been ousted in the revised list. Learned counsel for the applicants stated that many of the applicants have suffered as they had resigned from their previous jobs in preparation to join their new assignments. Many others have become over age to be appointed elsewhere.

16. We also notice that earlier respondents had advertised 142 vacancies of the post of Head Constable (AWO/TPO). Subsequently, this number was increased to 475 with further stipulation that number of vacancies may undergo a change. Under these circumstances, we dispose of this O.A. with a direction to the respondents to consider whether additional vacancies are available to appoint the applicants as well in addition to those figuring in the revised merit list. We are conscious of the fact that there may be some other candidates in between those figuring in the revised merit list and the applicants herein. That number is not known to us. Such candidates would also have to be appointed. Let the respondents examine and see whether without violating the merit of the selection process the applicants can be accommodated. This will, of course, be subject to availability of vacancies. The respondents may do so within next 08 weeks from the date of receipt of a certified copy of this order. No costs."

The directions given in paragraphs 15 and 16 were challenged before us in Writ Petition (C) No. 10748/2016, **Raj Kumar Vaswan and Others versus Commissioner of Police and Others**, decided on 27th January, 2017 and the following directions were issued:-

"8. The respondents have filed affidavit dated 2nd December, 2016 wherein they have stated that 137 open unreserved category and 204 open OBC category vacancies for the posts were advertised. The number of vacancies for the open unreserved category and open OBC category was, as per paragraph 8 of the affidavit, subsequently revised to

123 and 184, respectively. However, the total number of posts advertised remained the same. Accordingly, on the basis of the second merit or final list, 123 open unreserved category and 184 open OBC category candidates were selected. In addition, six candidates belonging to the open unreserved category and nine candidates belonging to open OBC category were kept in the additional or waiting list. Candidates in the additional list are to be accommodated in case the open unreserved category or open OBC category candidates do not join or for some other reason not appointed.

9. The petitioners on the other hand have referred to the reply dated 24th August, 2016 received by them under the Right to Information Act as per which some of the selected open unreserved category candidates or open OBC candidates have not joined.

10. Counsel for the respondents has obtained instructions and accepts that 246 selected candidates have joined the training course. Some of the selected candidates were declared unfit in the medical examination or have not been issued appointment letters due to adverse police verification reports. Petitioners submit that there have been self cancellation also.

11. Learned counsel for the respondents, on instructions, accepts that they have not challenged the directions given in paragraph 16 of the order dated 16th July, 2016 and would abide and comply with the same. We take the said statement on record and would dispose of the present writ petition on the basis of the said statement and reiterating the directions given in paragraph 16 of the Tribunal's order dated 16th July, 2016.

12. We do acknowledge and would accept that the completion of the exercise in terms of paragraph 16 quoted above may take a little time as some of the rejected candidates can challenge their rejection and may also obtain stay orders. This would require a policy decision, by the

respondents in accordance with the guidelines issued by Department of Personnel and Training. However, an expeditious and early decision in such matters and in terms of the directions given in paragraph 16 is desirable and always appreciated. It would curtail and prevent another round of litigation.

13. With the aforesaid observations, the writ petition is disposed of.”

The aforesaid writ petition related to the open unreserved category and the open OBC category. In the two categories, vacant posts had been filled up. In the present case, however, the petitioners belong to the open Scheduled Caste category and, as noticed above, there were 20 vacancies, which have been carried forward. The respondents have to accordingly, in terms of the directions issued in paragraph 16 of the order dated 16th July, 2016, examine the issue keeping in mind different perspectives, including the contention of the petitioners as well as others in the same position as petitioners. It does appear that the respondents have decided not to accept the claim of the petitioners. However, due to the pendency of the present petition, it is apparent that no orders have been communicated and informed to the petitioners.

19. As the respondents have not challenged the directions given in paragraph 16 of the order dated 16th July, 2016, we dispose of the writ petition in terms of directions given in paragraphs 11 and 12 of the order dated 27th January, 2017 passed in ***Raj Kumar Vaswan and Others*** (supra). We would not like to comment or give any further directions in this regard as this is a complex issue, which will require

examination of not one facet, but several competing and different aspects. Whatever decision is taken by the respondents, the same would be communicated to the petitioners, who, if aggrieved, can take action as per law.

20. With the aforesaid observations and findings, the writ petition is disposed of. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

September 8th, 2017
VKR



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