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

Reserved on: 23rd December, 2019

Decided on: 13th January, 2020

+ **WP(C) 5756/2017, CM APPLs. 23977/2017, 39333/2018 and
51071/2018**

DELHI SUBORDINATE SERVICE SELECTION BOARD (DSSSB) &
ORS.Petitioners

Through: Mrs. Avnish Ahlawat with Ms. Vibha
Mahajan and Mr. Nitesh Kumar
Singh, Advocates.

versus

PUNEET KUMAR & ORS.Respondents

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Tushar Sannu,
Advocate for R-1.
Mr. Kirti Uppal, Senior Advocate
with Mr. Aditya Awasthi, Advocate
for R-2.
Mr. M. K. Bhardwaj, Advocate for R-
3.

+ **WP(C) 13373/2018, CM APPLs. 52050/2018 and 52052/2018**

GOVERNMENT OF NCT OF DELHI & ORS.Petitioners

Through: Mrs. Avnish Ahlawat with Ms. Vibha
Mahajan and Mr. Nitesh Kumar
Singh, Advocates.

versus

SANDEEP KUMAR & ORS.Respondents

Through: Mr. Shanker Raju, Mr. Nilansh Gaur
and Ms. Ekta Dhama, Advocates.
Mr. Tushar Sannu, Advocate for R-2
and R-3.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

Introduction

1. These are two petitions by the Delhi Subordinate Services Selection Board ('DSSSB') challenging the orders dated 1st February and 27th February, 2017 of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') allowing OA Nos. 3941/2015 & 1578/2016, respectively.

2. W.P.(C) No. 5756/2017 is directed against the order dated 1st February, 2017 in OA No. 3941/2015. Petitioner No. 1 therein is the DSSSB through its Chairman; Petitioner No. 2 is Government of NCT of Delhi ('GNCTD') and Petitioner No. 3 is the Principal Secretary, GNCTD. The Respondents, three in number, are those who filed the above OA No. 3941/2015, which came to be allowed by the CAT.

3. W.P.(C) No. 13773/2018 is directed against the order dated 27th February, 2018 in OA No. 1578/2016. Petitioner No. 1 therein is the GNCTD; Petitioner No. 2 is the Principal Secretary, GNCTD and Petitioner No. 3 is DSSSB through its Chairman. Here again, there are 3 Respondents, all of

whom filed the above OA No. 1578/2016, which was allowed by the CAT.

4. The central issue in both these writ petitions is whether the CAT was justified in setting aside an order dated 15th March, 2016 passed by the Government of NCT of Delhi ('GNCTD') cancelling the examination held in 2014 and 2015 for appointment to the post of Head Clerk [Grade 2 (DASS)] in the GNCTD and directing the Petitioners to finalize the selection process for the above post, under post code 90/09 for which the Tier-I and Tier-II examinations had already been held on 29th June, 2014 and 29th March, 2015, respectively.

5. Two factors are required to be noticed at the outset. The first is that by an order dated 14th July, 2017 in W.P.(C) 5756/2017 this Court stayed the operation of the first impugned order dated 1st February, 2017 of the CAT. The second factor to be noticed is that before the CAT there were only 3 Applicants in each of the two petitions (i.e. 6 Applicants in all) who had approached it for relief, even though the impugned orders of the CAT contained directions that could benefit not only the 6 Applicants but others who had not approached it as well. Nevertheless, applications for intervention filed in this Court were dismissed. One such order was passed on 15th December, 2017 in W.P.(C) 5756 of 2017 dismissing CM APPL Nos. 34652/2017 & 43985/2017 (under Order I Rule 10 of the CPC). The said order reads as under:

“CM Nos. 34652/2017 & 43985/2017 (by the interventionist under Order I Rule 10 CPC)

1. The present applications have been filed by the applicants seeking impleadment in the petition on the ground that they

were declared as successful candidates in the examination held by the petitioners in respect of advertisement No.004/2d09 for post code No.90/09.

2. Learned counsel for the applicant submits that under the impugned judgment dated 01.02.2017 the OA filed by the respondents raising a grievance that after completion of the entire exercise for filling up the subject post, the DSSSB had not issued the select list as per the merit of the examination and had instead cancelled the entire selection process, was allowed by the Tribunal. While allowing the said OA, the Tribunal had quashed the order dated 15.03.2016 passed by the petitioners herein cancelling the entire examination and had directed DSSSB to finalise the selection process for Grade-II (DASS), post code 90/09 on the basis of the tier-I and tier-II examinations as held on 29.06.2014 and 29.03.2015.

3. Learned counsel for the applicants state that since they were successful in the aforesaid examination, any decision in the present case challenging the direction to finalise the selection process pertaining to the aforesaid examination, is likely to affect them adversely.

4. In our view, there is no justification for impleading the applicants in the present petition particularly when, the cause of action, if any, had accrued in their favour on 15.03.2016, when the petitioners/DSSSB had proceeded to cancel the entire examination, which action was admittedly, never challenged by them by filing a petition. Nor had they sought impleadment in the OA filed by the respondents.

5. In such circumstances, we do not see any reason to allow the present applications which are dismissed as devoid of merits.”

6. It must be noticed here that the above order has not been challenged thus

far and has attained finality. Subsequently, another order dated 19th September, 2018 was passed in the same W.P.(C) 5756/2017 by this Court, dismissing the CM APPL No. 34535/2018 filed by Naveen Yadav who in any event is a Respondent in the companion W.P.(C) 13373/2018. It must be noticed here that there another intervention application being CM APPL No. 39333/2018 (under Order I Rule 10 CPC) seeking impleadment has been filed. However, the Court is not prepared to entertain these intervention applications at this stage in view of the orders already passed by it.

7. As far as W.P.(C) 13373/2018 is concerned, there are only applications seeking permission to file additional documents.

8. The upshot of the above discussion is that the scope of the present petitions involves only the 6 Respondents i.e. 3 in each writ petition, who were the original Applicants before the CAT.

Background Facts

9. The background facts, which are common to both petitions, are that the DSSSB issued Advertisement No.004/2009 inviting applications for various posts in the GNCTD including for the post of Grade 2 (DASS)/Head Clerk in the Services Department-2 of the GNCTD.

10. On 29th June, 2014 the Tier-I (Preliminary Exam) was conducted and its results were declared on 21st October, 2014. What requires to be noticed at this stage is the gap between the date of the advertisement i.e. 26th December, 2009/1st January, 2010 and the date of the examination i.e. 29th

June, 2014. The advertisement was for 231 vacancies of Grade-2 (DASS)/Head Clerk which fact was conveyed by the Services Department to the DSSSB by a letter dated 7th November, 2009.

11. Pursuant to the advertisement, 62,056 applications were received. 8,224 candidates appeared in the Tier-I exam which was conducted more than 4 years thereafter on 29th June, 2014. In the Tier-II exam that was conducted on 29th March, 2015, only 2,136 candidates appeared and 290 of them succeeded.

12. Following the declaration of results of the above examinations, the office of the Chief Minister ('CM'), GNCTD received emails and letters with complaints in relation to irregularities in the conduct of the examinations. The complaints *inter alia* were as under:

(i) There were nearly 50 candidates who got high marks such 170/200 in Tier-I exam, which was of objective type, but scored zero marks in the Tier-II objective exam.

(ii) "Re-shuffling" of roll numbers had not been done and the seating arrangement for the Tier-II exam was devised in the original sequence of the roll numbers.

(iii) A disproportionate number of candidates came from a particular area in Delhi (North-West District, and more specifically, from Kanjhawala-Bawana-Narela, Khera Kalan)

(iv) The Tier-II exam papers and answer keys were sold for huge amounts of money.

(v) Members of the same family were sitting in the same examination room in both the Tier-I and Tier-II exams.

(vi) There were several instances of impersonation, even as invigilating authorities were bound to follow a system of cross-checking the candidate's attendance with his/her thumb impression.

13. By an order dated 22nd August, 2015 of the office of the Deputy CM, GNCTD, the DSSSB was informed that the office of the CM had received “serious complaints” in connection with the exam that had been conducted for the post of Grade-II (DASS). The order also intimated the DSSSB that a committee consisting of Director (Vigilance) and District Magistrate (East) had been appointed to inquire into the “veracity of charges of complainants” and that the committee would submit its report to the office of the Deputy CM within 10 days. The DSSSB was directed to not declare the results till further orders and assist the Committee in its inquiry.

14. By an order dated 26th August, 2015, the Directorate of Vigilance, GNCTD, other officers of the Directorate of Vigilance, as well as 2 advisors to the CM's Anti-Corruption Cell were “co-opted to assist the Committee”.

Report of the First Committee

15. The said Committee (hereafter referred to as the 'First Committee') conducted a preliminary investigation and submitted a report on 10th September, 2015 in which *inter alia* it was observed as under:

“35. On preliminary investigation of the case, based on some documents/information received from DSSSB and inputs given by the complainant, *prima facie* it appears that huge irregularities have been committed in Tier-I & Tier-II Examination. Randomisation is a basis component of any competitive examination for selecting suitable candidates. However, in the instant case whether randomisation of the application in Tier-I & Tier-II have been done or not, the outcome of basic investigation is that so many cases emerged where two or more members of a single family sat in the examination one after the other (consecutively) and they are also coming under zone of probable selection, this defeat purpose of fair practice of recruitment procedure.

36. Besides, the complainant in their complaint time and again levelled allegation that majority of candidates coming under zone of selection appears having definite geographical reason. This has been verified from the available documents provided by DSSSB and found *prima facie* substantiated.

37. Occurrence of similar malpractices in the previous exams conducted by DSSSB may also not be ruled out.

38. The documents required in the matter are of voluminous nature and each document needs full attention and thorough investigation accordingly for which huge man-powers is required. The thorough investigation will require approaching doubtful candidates, their interrogation, trapping of culprits, linking various clues etc. Only CBI or Crime branch can deal with this kind of cases as they have proper manpower, investigation techniques, police powers for investigation and enormous experience in cracking such cases. Information received from DSSSB are placed in LF-I & complaints/representation are placed in LF-II.”

16. Based on the preliminary findings of the First Committee a questionnaire was prepared by the Directorate of Vigilance and sent to the Chairman, DSSSB on 24th September, 2015 for his comments. These questions were *inter alia* as follows:

(i) What was the reason for the delay of nearly 5 years in holding the Tier-I Exam?

(ii) Was there a scrutiny of the applications to ascertain the eligibility of candidates in terms of the Recruitment Rules ('RRs')? Who were the officers/officials engaged in that exercise?

(iii) Since a number of candidates did not have easy access to internet facility, were admit cards sent to all eligible candidates through speed post as well? Who was the officer who had taken the decision to inform the candidates by e-mail/online?

(iv) Was there a randomization of roll numbers of candidates for the Tier-II and Tier-II exams and if not, what were the reasons for the same? Who were the officers/officials responsible for the failure to conduct randomization?

(v) What are the names and designations of officers responsible for allocation of exam centres to candidates and for deployment of Chief Invigilators, Observers and Assistant Observers at such exam centres? The names of the offices involved in the process of finalising the papers. What

was the procedure/policy for setting papers and who was the competent authority for that purpose?

(vi) What is the procedure/policy for selecting printing process for printing the question papers? What are the names of the officers involved in its supervision?

(vii) What is the procedure for getting printed papers in the premises and in whose custody they remained?

(viii) What is the action taken by the DSSSB on the complaints in relation to the conduct of Tier-I exam prior to conducting the Tier-II exam? What action was taken against the specific officials who were named in complaints?

(ix) Whether there was any mal-functioning of the jammer and videography at Shakarpur Exam Centre and what action was taken by the DSSSB against such officials?

17. The DSSSB on 1st October, 2015 provided detailed comments on each of the questions. *Inter alia* it was stated by the DSSSB, in its reply dated 1st October, 2015 as under:

(i) There was no record available to explain why the exam for which advertisement issued in 2009 itself could not be conducted earlier than 2014. By 2013 there were more than 25,000 vacancies to be filled. The DSSSB

had been conducting regular exam almost on monthly basis to clear the backlog.

(ii) The DSSSB convened a meeting on 1st June, 2013 to discuss the question of sending physical admit cards by post. It was decided to follow the example of UPSC and Railway Board and to issue e-admit cards which could be downloaded by candidates anywhere at any time and also by giving wide publicity to this procedure in newspapers, apart from DSSSB's website. This was because of the delay since the issuance of the original advertisement in 2009 and the fact that there could be change of addresses, postal delays and difficulty in issuing duplicate cards in case of lost/damaged admit cards.

(iii) For the Tier-II exam randomization was done. Prior to 28th June, 2015 no software was available for randomization. However, as a measure of extra-precaution, in view of the complaints received, manual reshuffling of the sitting arrangements of the candidates fetching highest marks was done so as to ensure adequate distance between them in the exam room. The roll numbers of the candidates against whom some complaints were received were highlighted in the sitting plan for all the invigilators and other officers to keep extra vigil. There was, in any event, a natural randomization on account of absentees and failed candidates.

(iv) The allegations regarding impersonation were without any basis since at the examination centres invigilators were required to determine identity of each candidate on the basis of details and photographs in the attendance-

sheet and the admit card of the candidate.

(v) There was no instance of mal-functioning of the jammers and videography.

(vi) The DSSSB did not carry out any scrutiny of eligibility of the candidates at the initial stage. It was done only vis-a-vis those candidates who were able to finally get through the selection procedure.

18. When these comments were placed before the First Committee, it further analysed the same. It submitted a detailed analysis/report on 12th October, 2015 noting *inter alia* as under:

(i) The clarification given by the DSSSB on the delay of 5 years in conducting the Tier-I exam was not convincing. The delay was unjustified.

(ii) The advertisement did not mention that admit cards would be issued through electronic media. The failure to send the admit cards through speed post to each of the Applicants had resulted in a sharp drop in the number of candidates who appeared for the Tier-I exam.

(iii) The DSSSB have either not given any comment or had given vague comments on the allegations of serious irregularities including against some candidates who got scored above 150 marks in the Tier-I exam (out of 200) but got very few marks in the Tier-II (objective paper). If indeed randomization in the Tier-II exam had been undertaken, it did not explain

how family members/close relatives sat in the same room and ID numbers were in a sequence. Even in the Tier-II exam, a number of family members/close relatives sat together.

(iv) The allegation of complaints regarding impersonation and connivance of middle men, Government Staff and candidates appeared to be correct. In the case of 12 candidates, the *prima facie* finding of impersonation, on account of failure of their signatures on admit card matching the signatures in the attendance-sheet, appeared to be correct.

(v) The DSSSB had allowed candidates irrespective of qualification to appear substantiating the allegation that it had not scrutinised all the Applicants either prior to the Tier-I or Tier-II exam, giving opportunity to unfit candidates to obtain undue benefits.

19. The above report was placed by the Secretary (Vigilance) on 19th October, 2015 before the Deputy Chief Minister. Again, comments were called for from the DSSSB on 20th October, 2015.

20. By its letter dated 9th November, 2015, DSSSB informed the office of the Deputy CM that a special board meeting of the DSSSB had been held on 5th November, 2015. Enclosed with the said letter was a summary of the comments of the DSSSB, which were approved in the special board meeting. The comments are as under:

“(i) The delay was due to certain administrative constrains as highlighted in the correspondence with the Services department

as well as due to accumulation of huge pendency during this period.

(ii) The decision was taken in the Board meeting in line of similar practices by most major recruiting bodies in view of massive administrative issues arising out of previous system of physical admit cards.

(iii) Difference in score of different exams is quite plausible in view of different level of difficulty, gap between the exams and exam day preparation of the candidate. Similar phenomenon with other examining bodies like SSC is highlighted.

(iv) No case of any deliberate attempt to impede the extraordinary measures like videography and mobile jammers is made out.

(v) Answer keys are not available in the Board till the completion of exam process. It would be absurd to question the integrity of senior officers of the Delhi govt. who are deployed as Flying squad members.

(vi) Clarification regarding eligibility of various educational qualifications was provided by the Services department which also happens to be the user department in this case.

(vii) Shri Praveen Malik, presented with genuine looking admit card at the centre which did not match with the records present. However, as detailed verification was not possible at the instant, he was allowed with an undertaking to the effect. After his candidature was rejected by the Board, he appeared for Tier-II exam through a court order, the matter is sub judice.

(viii) The Board had already decided to verify the hand writing, signatures and thumb impression of all the candidates in the consideration zone and had completed the proceedings for 12 candidates against whom specific complaint was received.”

21. It appears that following the response of the DSSSB, a meeting was held by the Deputy CM with the Chairman, DSSSB on 8th December, 2015. On 23/28th December, 2015 the following order was issued by the Deputy CM:

“On the basis of recommendations of the DSSSB on the alleged irregularities in the exam conducted for the post of Grade-II (DASS) Post Code 90/09, it is hereby directed that all the candidates who are in consideration zone may be scrutinized by DSSSB to check impersonation before the decision of the Board regarding declaration of the result. The candidates, in the zone of consideration, who fail to attend the process of verification of impersonation, should be disqualified from this exam.

FIR should be lodged against any impersonator found during this exercise. Disciplinary proceedings may be initiated against concerned Superintendents of the Examination Centres who are responsible to ensure that the invigilators obtain the thumb impression of the candidates in the respective attendance sheets.

DSSSB shall complete this exercise within a month.”

Deliberations of the Second Committee

22. On 14th January, 2016 a four-member committee (hereafter, referred to as the ‘Second Committee’) was constituted by the DSSSB “to check the credentials of all the candidates falling in the zone of consideration in the merit list for Gr.II/DASS (post code 90/09) for checking of the candidate and the authenticity of his/her candidature.”

23. Between 1st and 26th February, 2016 a verification of the 290 candidates, who had qualified in Tier II exam was conducted. The Second Committee submitted a report on 29th February, 2016 in which it stated that it could not conclude the verification process owing to the records having been seized by

the Anti Corruption Bureau ('ACB') pursuant to FIR No.5 of 2016 registered by it, on 18th February, 2016.

24. It was *inter alia* submitted in the report dated 29th February, 2016 of the Second Committee as under:

“58. During the process of verification, out of the 290 candidates called as per schedule from 1st February to 12th February only 270 candidates remained present. The remaining 20 candidates were given another opportunity to remain present on 26th February, out of which only 11 candidates remained present. Besides service of notices the notice of calling remaining 20 candidates was also uploaded on the website and published in prominent newspapers.”

25. The Second Committee in its report dated 29th February, 2016 made the following observations:

“1. Document verification of the present candidates was completed by the identified DSSSB officials along with the Vigilance Department officials. No irregularity was found in the documents of the 281 present candidates.

2. In regard to 02 Candidates (Sh Dinesh Kumar Roll No- 90003227, Sh Kishan Kumar Roll No- 90057546), all the 6 available thumb impression records with DSSSB were found unfit for match with the live prints captured at the time of verification (Annexure VII).

3. For 01 candidate (Sh Yogesh Kumar Roll No- 90030785) the live print did not match with the Tier-II records but was found matching with Tier-I records and application form (Annexure VIII). In the FSL report, suspicious in writing & signature are observed.

4. During verification it was disclosed by 02 candidates (Sh

Deepak Mann Roll No - 90038154 and Sh Amit Khatri Roll No- 90041220) that they had been imprisoned in the past for their involvement in the paper leak/cheating cases in the UPSC exam and SSC exam respectively. Sh. Deepak Mann was employed in Delhi Police till 2010 as Sub Inspector subsequently he resigned. Sh. Amit Khatri is employed in Income Tax Department at Mumbai and is currently under suspension.

5. While examining the records of all the 09 absentee candidates, it was noticed that Shri Subhash Singh (Roll No. 90010887) being earlier called for similar process on 14 August 2015, has a handwritten passage which the FSL expert found it doubtful and wish to re-examine the sample in greater details. The thumb impressions were found unfit for match.

6. In the Biometric verification report of Shri Vikas (Roll No. 90056139), it is mentioned that Application form fingerprint does not match with Tier-I and Tier-II fingerprints. Tier-I and Tier-II fingerprint does not match with each other. And the report of another candidate, Shri Subhash Singh (Roll No. 90010887) - No opinion can be given as Tier-I and Tier-II fingerprints are unfit for matching. Only fingerprint on application form is partially matchable but no reference fingerprint is available for matching. Both the candidates were absent for verification.

7. Photograph, of a candidate Sh. Praveen Dabas (Roll No- 90020057) was not available in the application form, Attendance sheet of Tier- I and Tier-II.

8. Significant numbers of candidates were found already working in various Govt. departments like Delhi Police, Central Govt. ministries, MCD etc.”

26. In its report the Second Committee also noted that an investigation had been commenced by the ACB. The Second Committee observed as under:

“68. Investigation by Anti Corruption Bureau (ACB)

Before the department could conclude its ongoing verification process, an FIR No.05/2016 dated 18.01.16 u/s 13 (1)(d) of Prevention of Corruption Act 1988 r/w 120 (B) of IPC was registered at PS-Anti Corruption Branch, Delhi. A team of ACB officers led by Shri Mahender Pal, ACP visited the DSSSB office on 19.02.16 and seized the files (in original) concerning post code 90/09 Graded -II (DASS) and related papers (certified copies) by issuing notice u/s 91 of CrPC. The certified copies of dossiers comprising application forms, OMR sheets of Tier-I & II, attendance sheets of Tier-I & II in respect of the 290 candidates under consideration zone being verified was subsequently seized on 26.02.16.”

Note of the Deputy CM

27. The matter was then placed again before the Deputy CM who prepared a note dated 2nd March, 2016 for the consideration of the CM. The said note reads as under:

“74. This has reference to the examination conducted for the post of Gr.II (DASS) post code 90/09 by DSSSB. Consequent upon several complaints received by the Government about the irregularities in the examination process, the matter was referred to the Directorate of Vigilance to conduct an inquiry into the allegations.

75. On receipt of interim report of the Directorate of Vigilance, I directed DSSSB to check alleged cases of impersonation before any decision is taken by the Board regarding declaration of the result. I also directed that the candidates, in the zone of consideration, who failed to attend the process of verification of impersonation, should be disqualified from this examination and FIR should be lodged against any impersonator found during the said exercise by DSSSB.

76. I further directed DSSSB to initiate disciplinary proceedings against concerned Superintendents of the Examination Centres

who were responsible for ensuring that the invigilators obtained the thumb impression of the candidates in the respective attendance sheets. The verification process was to be carried out by DSSSB under the overall supervision of the Directorate of Vigilance.

77. It has been reported by DSSSB that out of 290 candidates in the zone of consideration, 9 candidates did not report for verification and serious lacuna were found against 7 candidates which inter-alia include thumb impression unfit for match with the live prints; suspicious in writing and signature; unmatched thumb impression of candidates in Tier-I and Tier-II exam; photograph of a candidate not available in the application form and police records of two candidates in similar cases.

78. It is pertinent to note that verification has been carried out only in respect of candidates who are in the zone of consideration and the report of Directorate of Vigilance and DSSSB clearly indicate that the examination process has been vitiated. There are far serious complaints about the conduct of Tier-I examination for the same post code.

79. This Government has zero tolerance towards corruption and officials who may join the Government through improper examination are just not acceptable. Therefore, it is recommended to cancel the examination conducted by DSSSB for the post code 90/09 and hold the examination afresh. In the interest of justice, all the affected candidates who are found eligible to take part in the above examination may be provided suitable age relaxation for the new examination.

80. May like to approve.”

28. The above note of the Deputy CM was approved by the CM and that is how the impugned order dated 15th March, 2016 cancelling the entire exam and for starting the process afresh was issued.

29. In the meanwhile, the candidates in the zone of consideration, which included the Respondents herein, who were waiting for the select list to be released, submitted a representation to the Deputy Chief Minister dated 3rd September, 2015, upon hearing via newspaper reports that a two-member committee had been constituted to investigate complaints of serious irregularities in the conduct of the examination. In the said representation it was contended *inter alia* that the allegations as to irregularities were being advanced by unsuccessful candidates who were merely looking for another opportunity to write the examination. Citing judicial decisions, it was further argued at length that there were no reasons whatsoever to cancel the entire examination.

Orders of the CAT

30. Aggrieved by the failure of the Petitioners to act on the said representation, OA No. 3941/2015 came to be filed by the 3 Respondents in W.P.(C) 5756/2017. OA No. 1578/2016, on the other hand, was filed by the 3 Respondents in W.P.(C) 13373/2018 subsequent to the issuance of the impugned order dated 15th March, 2016.

31. In the impugned order dated 1st February, 2017 passed in OA No. 3941/2015 the CAT, after discussing the decisions in ***Shankarsan Dash v. Union of India (1991) 3 SCC 47, Ekta Shakti Foundation v. GNCTD AIR 2006 SC 2609, Union of India v. Tarun K. Singh AIR 2001 SC 2196, Inderpreet Singh Kahlon v. State of Punjab (2006) 11 SCC 356, Joginder Pal v. State of Punjab (2014) 6 SCC 644, Union of India v. Rajesh PU,***

Puthuvalnikathu (2003) 7 SCC 285, East Coast Railway v. Mahadev Appa Rao (2010) 7 SCC 678 and C. P. Kalra v. Air India through its Managing Director, Bombay (1994) SCC (L&S) 476, came to the following conclusions:

- (i) The selection process should be cancelled only as a last resort and not merely on the basis of vague allegations by unsuccessful candidates.
- (ii) An effort should be made to separate the meritorious and innocent candidates from tainted ones. Only when it is impossible to do so should the entire selection process be cancelled. Otherwise, it would result in granting equal treatment to innocent candidates on the one hand, and tainted ones, on the other.
- (iii) The irregularities noticed must be of such nature as to vitiate the entire selection, making it impossible to segregate the meritorious candidates from the rest. Without carrying out such an exercise, the cancellation of the entire exam would be arbitrary and unjustified, notwithstanding the fact that successful candidates do not have an indefeasible right to be appointed.

32. The CAT noticed that the Second Committee had examined the details of each and every candidate likely to figure in the merit list and found that 281 such candidates ‘were free from blame.’ The status report submitted by the ACB showed that the investigation was confined only to such of the candidates whose conduct was found to be suspect by the second committee. Thus, the 281 candidates found to be innocent by the DSSSB were not part

of the ACB investigation. Cancelling the candidature of 281 candidates, who were free from blame, was, therefore, “arbitrary and unjustified”.

33. Accordingly, the impugned order dated 15th March, 2016 cancelling the entire examination, and ordering the selection process to be begun afresh, was set aside. The CAT, however, saw it appropriate to direct that the appointments offered to the successful candidates would be subject to the ongoing ACB investigation.

34. In the second OA No. 1578/2016 the CAT simply followed its earlier order dated 1st February, 2017 and issued the same directions, which have been set out hereinbefore.

35. This Court has heard the submissions of Mr. Sudhir Nandrajog, learned Senior Counsel, Mrs. Avnish Ahlawat and Ms. Vibha Mahajan Seth, learned counsel for the Petitioners. The submissions of Mr. Dayan Krishnan and Mr. Kirti Uppal, learned Senior Counsel, appearing for the Respondents in the two writ petitions respectively have also been heard.

Submissions on behalf of the Petitioners

36. On behalf of the Petitioners, the following submissions were made:

- a. The CAT had disregarded the fact that the impugned order dated 15th March, 2016 was passed keeping in view the serious allegations of malpractices which included impersonation and in respect of which an FIR has been registered and investigations have been undertaken by the

ACB of the Delhi Police.

- b. The impugned order of the CAT ignored the underlying basis of the order passed by this Court on 5th October, 2016 in W.P.(C) 1260/2016 (***Manoj Kumar v. Delhi Subordinate Service Selection Board***) where the prayer for finalising the selection process of Grade-2 (DASS) post code 90/09 was held to have become infructuous upon the Court being informed that the GNCTD had accepted the recommendations of the first committee and cancelled the entire exam.
- c. The investigation of the ACB had wider scope and was not limited to a few candidates in terms of the report of the second committee constituted by the DSSSB.
- d. Success in an exam did not confer an indefeasible right upon the candidate to be selected. The decision to cancel the entire selection process was not discriminatory and not violative of any fundamental right. Reliance was placed on the decision of the Supreme Court dated 2nd August, 2019 in CA 6190-6201 of 2019 (***State of Tamil Nadu v. A.Kalaimani***), ***Avinash C. v. State of Karnataka AIR 2018 SC 2454***, ***Chairman, All India Railway Rec. Board v. K.Shyam Kumar & Ors. (2010) 6 SCC 614***, ***Gohil Vishvaraj Hanubhai v. State of Gujarat (2017) 5 SCALE 433*** and ***Madhyamik Shiksha Mandal M.P. v. Abhilash Shiksha Prasara Samiti (1998) 9 SCC 236*** to urge that interference in the decision of the Government in the matters of conduct of selections was unwarranted.

Submissions on behalf of the Respondents

37. On behalf of the Respondents it was submitted as under:

- a. The Petitioners had failed to demonstrate how any of the present 6 candidates were found to have indulged in any irregularity/malpractice in terms of the reports of the first committee and second committee. On the other hand, each of the 6 candidates who were the Respondents here were free from blame and as such, there could be no justification in cancelling their candidature.
- b. Reliance was placed *inter alia* on the decision of this Court dated 21st January, 2019 in LPA No. 225/2017 (***Dr. Pranab Baishya v. Union of India***) which was affirmed by the Supreme Court by its order dated 8th November, 2019 dismissing the SLP (C) 10786-88 of 2019. Reliance was also placed on the decisions referred to by the CAT in its impugned orders.
- c. It is pointed out that the 6 Respondents who were the successful candidates would be severely prejudiced on account of the cancellation of the entire examination as they would be unable to take any further exam due to age bar. Even if the age requirement were to be relaxed, it would be unfair to subject them to the ordeal of another exam where they would have to face fresh competition from a larger number of candidates, particularly when they had successfully cleared the exam in question and a large number of vacancies were available against which they could be

accommodated.

Analysis and Reasons

38. The above submissions have been considered. The Court would like to preface its analysis of the submissions with the observation that it is undisputed that at present there are vacancies against which the 6 Respondents, if they succeed in the present petitions, can be accommodated. In other words, the Petitioners have confirmed to this Court that the 286 vacancies for which the advertisement in question was issued remain unfilled.

39. Secondly, the Court would like to reiterate that the scope of the impugned orders of the CAT would be confined to the 6 Applicants before it. In other words, the Court does not propose to expand the scope beyond the 6 candidates i.e. the Respondents herein, who were originally before the CAT. With these observations, in what follows the Court proceeds to analyse the legal position in some detail.

40.1 One of the earliest cases pertaining to the subject matter at hand that came to be adjudicated by the Supreme Court was that of ***Bihar School Examination Board v. Subhas Chandra Sinha, (1974) 3 SCC 220***. There, during the course of the selection process, it was noticed that whereas the average number successful candidates across centres was 50%, in the centre in question, the percentage of pass in different papers was unusually high, ranging from 70% to 100%.

40.2 According to the Supreme Court, which set aside the order of the High Court holding the cancellation of the entire exam to be unfair, the exam was vitiated “by adoption of unfair means on a mass scale” it was held that the plea of the affected candidates that the selection board “must hold a detailed inquiry into the matter and examine each individual case to satisfy itself as to which of the candidates had not adopted unfair means” would be incorrect.

40.3 The Supreme Court held that “the examination as a whole had to go.”

41. It must be observed here that the stage at which the affected candidates had approached the Court in the above case was when no inquiry had been undertaken by the Board and its decision was simply based on the fact that in one centre the percentage of pass was unusually high. In the present case, however, through a detailed inquiry already conducted by two committees, it has been possible to determine that at least in respect of 281 candidates there was no evidence of any unfair means having been adopted. In other words, in the present case it has been possible to identify which of the candidates did not adopt any unfair means. The above decision in *Subhas Chandra Sinha* (*supra*) is therefore distinguishable from the case at hand on facts.

42.1 In contrast, is the decision of a three-judge bench of the Supreme Court in *Anamica Mishra v. Union Public Service Commission (1990) Supp. SCC 692*. Here, the facts were that an error had been detected at the stage of calling candidates for the interview. Again, the entire examination was

cancelled. The Supreme Court held that since no defect was pointed out in respect of the written examination and the objection was confined to the exclusion of a group of successful candidates during the interview, there was no justification in cancelling the written exam. It was of the view that an appropriate response to the situation would have to be to set aside the recruitment and direct a fresh round of interviews for candidates who became eligible on the basis of the written examination.

42.2 It must be noticed here that the observation of the Supreme Court in *Shankarsan Dash v. UOI* (*supra*) that it is incorrect to say that “the successful candidates acquire an indefeasible right to be appointed” has to be seen in the context of the further observation in the same decision that “it does not mean that the state has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons”.

43. In a similar vein, is the decision of the Supreme Court in *Onkar Lal Bajaj v. Union of India* (2003) 2 SCC 673, where mass cancellation of licences granted to LPG distributors, was held to be an arbitrary exercise. It was observed as under:

“45. The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories—tainted and the rest—on par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution. It is apparent from the guidelines that the dealerships and distributorships were provided to be given to the allottees as a welfare measure. Even in respect of open

category there is a limitation for the income of the applicant being not more than 2 lakhs per annum so as to be eligible for consideration by the DSBs. The DSBs are required to consider the applications within the parameters of the guidelines and select the best applicant. If the DSBs in some cases have selected someone not on merits but as a result of political connections/considerations and positions of the applicant, undoubtedly such allotments deserve to be quashed. In Common Cause case (supra), this Court on examination of the facts held that the allotment to the sons to the Ministers were only to oblige the Ministers. The allotments to the Members of the Oil Selection Boards and their/Chairmen's relations had been done to influence them and to have favours from them. It was observed that a minister who is the executive head of the department concerned, when distributing benefits and largesses in a welfare state in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. has to deal with people's property in a fair and just manner. He holds all these as a trust on behalf of the people. He cannot commit breach of the trust reposed in him by the people.

46. The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining any cases exposed by the media. If hue and cry is made that certain allotments have been made to sitting Members of Parliament or their wives or Members of Legislature or their relations, the public, media and the opposition would be justified in raising eye-brows. It is a different matter that on independent examination nothing may be found in those cases.”

44. In *Union of India v. Rajesh P.U., Puthuvalnikathu* (*supra*) the Supreme Court was dealing with the legality of the decision of the Central Bureau of Investigation ('CBI') of cancelling the entire selection process. The Court emphasised the need to segregate the tainted and the untainted candidates and held the action of the CBI to be arbitrary for failing to do so, as under:

“In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

45.1 Since considerable reliance has been placed by counsel on the decision in *Inderpreet Singh Kahlon v. State of Punjab* (*supra*), the said decision requires to be discussed in some detail.

45.2 The facts there were that one Ravinder Pal Siddhu was the Chairman of Punjab Public Service Commission (PPSC) between 1996 and 2002. There were allegations against Mr. Siddhu that between 1998 and 2001, he got a large number of persons appointed to various posts in the State Government on the basis of extraneous considerations.

45.3 Pursuant to the said allegations, the State Government decided to cancel the entire selection for recruitment to the PCS (Executive Branch) and Allied Services in 1998. As regards judicial officers appointed to the PCS (Judicial Branch), the High Court accepted the recommendations of two scrutiny committees appointed by it and terminated the services of those appointed on the basis of the selections made by the PPSC against vacancies for period between 1998 and 2000.

45.4 The writ petitions filed by the selected candidates were dismissed by a Full Bench of the High Court of Punjab and Haryana. The order of dismissal was then challenged in the Supreme Court, which reversed the decision of the Full Bench of the Punjab and Haryana and explained the legal position that before a finding regarding commission of legality in a selection process “the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied”.

45.5 The Supreme Court after discussing its previous decisions in *Subhas Chandra* (*supra*), *Anamica Mishra* (*supra*), *Rajesh P.U.* (*supra*) and *Onkar*

Lal (*supra*) further observed in *Inderpreet Singh Kahlon v. State of Punjab* (*supra*) as under:

“In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event, it is found to be impossible or highly improbable, could en masse orders of termination have been issued.”

45.6 The Supreme Court in *Inderpreet Singh Kahlon v. State of Punjab* (*supra*) also set out an entire tabulation of the cases that would fall in the different categories, as under :

“(i) Cases where the “event” has been investigated:

(a) *Union Territory of Chandigarh v. Dilbagh Singh*, SCC at paras 3 and 7.

(b) *Krishan Yadav v. State of Haryana*, SCC at paras 12, 15 and 22.

(c) *Union of India v. Anand Kumar Pandey*, SCC at para 4.

(d) *Hanuman Prasad v. Union of India*, SCC at para 4.

(e) *Union of India v. O. Chakradhar*, SCC at para 9.

(f) *B. Ramanjini v. State of A.P.*, SCC at para 4.

(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded:

(a) *O. Chakradhar*

(b) *Krishan Yadav*

(c) *Hanuman Prasad*

(iii) Cases where the selection was made but appointment was not made.

(a) *Dilbagh Singh*, SCC at para 3.

(b) *Pritpal Singh v. State of Haryana*

(c) *Anand Kumar Pandey*, SCC at para 4.

(d) *Hanuman Prasad*

(e) *B. Ramanjini*, SCC at para 4.

(iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules:

(a) *Krishan Yadav*

(b) *Pramod Lahudas Meshram v. State of Maharashtra* wherein appointments had been made without following the selection procedure.

(c) *O. Chakradhar* wherein appointments had been made without typewriting tests and other procedures of selection having not been followed.”

45.7 Accordingly, it was held by the Supreme Court in ***Inderpreet Singh Kahlon v. State of Punjab*** (*supra*) that the High Court was not right in treating all cases identically and posed the question of whether “due to the misdeed of some candidates, honest and meritorious candidates should also suffer?” The matter was remitted to the High Court for fresh consideration “with a view to segregate the tainted from the non-tainted”.

45.8 It may be noticed that in the present case that exercise has already been

undertaken by the elaborate inquiry undertaken by the GNCTD and the DSSSB. Therefore, in the present case there is no difficulty in separating the untainted candidates i.e. the 6 Respondents herein, from the tainted ones.

46. The Supreme Court in its decisions in ***Girijesh Srivastava v. State of M.P (2010) 10 SCC 707*** and ***Vikas Pratap Singh v. State of Chhattisgarh AIR 2013 SC 3414*** adopted a similar position. In the latter case, the Supreme Court observed as under:

“20. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi, (1990) 3 SCC 655, P. Chengalvaraya Naidu v. Jagannath and others, (1994) 1 SCC 1 and Union of India and others v. M. Bhaskaran, 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: Vindan T. And Ors. v. University of Calicut and Ors., (2002) 4 SCC 726; State of U.P. v. Neeraj Awasthi and ors. (2006) 1 SCC 667).”

47. In ***Joginder Pal (supra)***, the Supreme Court considered another decision

of the Government of Punjab of cancelling the entire selection process. Extensively referring to its earlier decisions in ***Inder Singh Kahlon*** (*supra*) and ***Onkar Lal*** (*supra*), the Supreme Court held as under:

“40. In view of the above, the issue of entire selection process having been vitiated would have arisen only if the findings of the Committee were that it was not possible to distinguish the cases of tainted from the non-tainted ones and there was a possibility that all of them would have got the benefit of wrong doings of Mr. Sidhu and his accomplices. Fortunately for these appellants, it is not so as they have been found innocent. The appellants get ensconced, earning a safe place, once they are removed from the category of nefarious persons. Though the tainted candidates have rightly received their comeuppance, but the innocent persons cannot be punished with them. Thus, it is difficult to accept the fallibilistic conclusion of the High Court.”

48. In ***Madhyamic Shiksha Mandal M.P. v. Abhilash Shiksha Prasar Samiti*** (*supra*) there was no discussion of any case law as such and it the case pertained entirely to leakage of question papers and mass copying, which is not the case here.

49.1 In ***Chairman, All India Railway Recruitment Board v. K. Shyam Kumar*** (*supra*), the Railway Recruitment Board (‘RRB’) invited applications for Group ‘D’ posts in the South-Central Railway by a notification published on 13th June, 2003 in the South-Central Railway Zone, Secunderabad. A total of 10,02,909 applications were received, out of which 5,86,955 were found eligible. Call letters were sent to the eligible candidates asking them to appear in the written test to be held at various centres between 9th and 21st November, 2003. As many as 3,22,223

candidates appeared, out of which 2690 were selected and called for the Physical Efficiency Test. Those who qualified in the PET were called for verification of the original certificates between 4th and 12th April, 2004.

49.2 During verification, it was noticed that certain malpractices had taken place during the written exam. The RRB also received several complaints that certain candidates had indulged in mass copying in some centres, leaked question papers and also engaged in impersonation of certain candidates. The matter was then referred to the State Vigilance Department.

49.3 The report of the Vigilance Department was placed first before the CAT and then before the High Court. The inquiry *prima facie* revealed leakage of question papers, mass copying and impersonation of candidates in the written test. It also indicated the possibility of involvement of some of the employees of the Railways as well certain outsiders.

49.4 The Vigilance Department recommended that the matter be referred to the Central Bureau of Investigation ('CBI'). The RRB on consideration of the Vigilance Report issued a direction on 4th June, 2004 to conduct a re-test for those who had obtained minimum qualifying marks in the written exam. The Railway Board also ordered the RRB to take steps to conduct the written exam and PET at the earliest.

49.5 Those who had taken the first written exam approached the CAT, Hyderabad challenging the decision to conduct the re-test. It was contended, in the alternative, that even if the RRB had the power to conduct a second

stage written exam, it should be confined only to 2,690 candidates who had qualified in the first written exam. The CAT, however, negated this plea.

49.6 The High Court before which the decision of the CAT was challenged, found no reason to cancel the first written exam and to conduct a re-test of 2690 candidates who got minimum qualifying marks in the written test which included 62 candidates against whom there were serious allegations of impersonation. The High Court noted that a copy of the report of the Vigilance Department had not been made available to the Petitioners and that the decision to conduct a re-test was arbitrary, illegal and unreasonable. When the order dated 4th June, 2004 was passed by the Railway Board only the report of the Vigilance Department was available which was insufficient to support the impugned order. The materials collected by the CBI subsequently could not be relied upon to support that decision.

49.7 The Supreme Court, during the pendency of RRB's appeal before it, permitted the result of the second test to be declared and the selected candidates to be appointed, subject to the outcome of the appeals. The Court was informed that candidates who had qualified in the re-test were already appointed and had joined service.

49.8 Aside from noticing its earlier decision in *Madhyamik Shiksha Mandal (supra)*, the Supreme Court in *Chairman, All India Railway Recruitment Board v. K. Shyam Kumar (supra)* *inter alia* discussed the applicability of the Wednesbury Test that was laid down by the Court of Appeal of England and Wales in *Associated Provincial Picture Houses vs.*

Wednesbury Corporation (1947) 2 All India Reporter 680 (CA) as well as the relevance of the proportionality test explained by the UK House of Lords in ***Council of Civil Services Union vs. Minister of Civil Service (GCHQ Case) (1984) 3 All India Reporter 935 (HL)***. It held that the High Court had perpetuated an illegality by affirming the third alternative of confining the investigation to 62 candidates.

49.9 In other words, the Supreme Court in ***Chairman, All India Railway Recruitment Board v. K. Shyam Kumar (supra)*** affirmed the decision of the Railway Board to conduct the second written test for those who had obtained minimum qualifying marks in the first written test. This, according to the Supreme Court, satisfied both the tests of proportionality and *Wednesbury* unreasonableness.

50. It must be noted here that in the above decision in ***K. Shyam Kumar (supra)*** the Supreme Court did not note the decision of the Coordinate Bench of the Supreme Court in ***Inderpreet Singh Kahlon (supra)***, discussed at some length hereinbefore.

51. In any event, in the present case, it is clear that the Petitioners have been unable to show that in the elaborate inquiry undertaken by them, any of the 6 Respondents herein had indulged in any malpractice of any kind.

51.1 In ***Gohil Vishvaraj Hanubhai v. State of Gujarat (supra)***, the Supreme Court again considered the legality of the decision of the Respondents therein in cancelling the entire examination.

51.2 The facts there were that 1800 posts of Revenue Talati were to be filled up and a committee was constituted to carry out the recruitment process. The committee decided to avail the assistance of the Gujarat Technological University (GTU). The examination was conducted in 2691 centres spread over 33 districts. 7,53,703 candidates appeared in the exam.

51.3 A day prior to the exam, an FIR was registered against two persons alleging that they had collected money from some of the candidates who were to appear in the exam by assuring them appointments. The police authorities informed the Committee that during the interrogation of the two arrested persons it emerged that the said persons had advised the candidates to put a 'B' mark on the right side of the OMR Sheet. 284 such OMR sheets had the specific mark. Those candidates were eliminated for consideration. A provisional merit list was declared in which 8465 candidates were placed.

51.4 Meanwhile other complaints were received. And more irregularities were noticed. 127 candidates belonging to one family were placed in the provisional merit list. 178 candidates were found to have the same residential address. These facts led the Committee to cancel the entire examination process.

51.5 After the Gujarat High Court dismissed both petitions and writ appeals, the aggrieved candidates approached the Supreme Court. The question for the Supreme Court's consideration was whether the response of the State of Gujarat in cancelling the entire examination was so disproportionate as to be

arbitrary?

51.6 In *Gohil Vishvaraj Hanubhai v. State of Gujarat* (*supra*), the Supreme Court referred to a host of decisions concerning what constitutes arbitrary administrative action under Article 14 of the Constitution, and had answered the question in the negative as under:

“29. We have already held that there were large scale malpractices at the examination process and the State was entitled to take appropriate remedial action. In the context of the occurrence of such malpractice obviously there can be two classes of candidates: those who had resorted to malpractice and others who did not. By the impugned action, no doubt, all of them were treated alike. Whether such herding together would amount to the denial of the equal protection guaranteed under Article 14 is the question.

Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time-consuming process. If it were to be the requirement of law that such identification of the wrong doers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for that matter all the candidates including the wrong doers) still get an opportunity of participating in the fresh examination process to be conducted by the State. The only legal disadvantage if at all is that some of them might have crossed the upper age limit for appearing in the fresh recruitment process. That aspect of the matter is taken care of by the State. Therefore, it cannot be said that the impugned action is vitiated by lack of nexus with the object sought to be achieved by the State, by herding all the candidates

at the examination together.”

52. The Supreme Court in an order dated 4th April, 2018 in CA Nos. 3543-3555/2018 (*Avinash C. v. State of Karnataka*) discussed the decision of the Karnataka High Court which had “referred to material on record in the form of call details between candidates and members of the Karnataka Public Service Commission (KPSC). All members who interviewed the candidates awarded exactly the same marks to particular candidates. 566 candidates were awarded same marks which appeared to be pre-determined. Digital video recorder in the KPSC building was replaced and evidence was destroyed. It was observed that “it may not always be necessary to segregate tainted and untainted candidates when the process itself is tainted”. It is important to note that this decision does not refer to the whole line of decisions discussed hereinbefore which emphasize the need to segregate tainted from the untainted candidates.

53. More recently, the Supreme Court rendered its decision in *State of Tamil Nadu v. A. Kalaimani* (*supra*). Here, the Supreme Court was dealing with a situation where, upon an inquiry being conducted, it was found that there was sufficient material to conclude that 196 candidates had resorted to malpractices. The Supreme Court, referring to its earlier judgment in *Gohil Vishvaraj* (*supra*), took the view that in the instant case the investigation was ongoing and there was substantive material to conclude that there was a possibility that other candidates had also adopted unfair means. Accordingly, the judgment of the Division Bench of the Madras High Court, which had held the cancellation of the entire examination to be arbitrary,

was set aside.

54. It is clear that the above decision of the Supreme Court in *State of Tamil Nadu v. A. Kalaimani* (*supra*) upholding the decision of the State of Tamil Nadu entirely turned on the factual finding that the entire selection process had been vitiated. However, in the present case, in the course of the detailed inquiry conducted it has been possible to determine that there was no material against 281 candidates, which include the six Respondents in the present petitions.

55. The legal position that emerges from the above overview of the decisions of the Supreme Court is that:

(i) Candidates successful in the selection process do not have an indefeasible right to be appointed.

(ii) However, the decision to cancel an entire selection process and commence the same afresh must be predicated on a finding of fact that the process was wholly vitiated.

(iii) An important sequitur to this proposition is that efforts must be made to segregate those of the candidates who emerged successful in the selection process on account of unfair means from those who did not deploy such means to succeed in the selection process. Failure to do so would necessarily constitute according equal treatment to two groups of candidates who are in fact differently situated, and would, as such, be arbitrary.

56. In the present case it has been possible to factually arrive at a finding that none of the 6 Respondents before the Court is guilty of any malpractices. Nevertheless, the Court wishes to clarify that even if at a subsequent stage any of these six Respondents, who are being directed to take the Tier-II written exam again, are found to have indulged in any malpractice, it will be open to the Petitioners to cancel their appointment if it is made pursuant to their qualifying in the Tier II exam and subsequent stages of the selection process.

Conclusions and Directions

57. The Court is of the considered opinion that the impugned order dated 1st February, 2017 of the CAT took into account the legal position set out above to arrive at the conclusion that it has. The Court therefore sees no ground to interfere with the impugned order of the CAT dated 1st February, 2017 as well as its order dated 27th February, 2017 insofar as it is confined to the six respondents before this Court.

58. *Qua* the 6 Respondents before the Court, the following directions are issued:

(i) Each of the 6 Respondents will undertake afresh the Tier-II exam to be conducted by the DSSSB within a period of two months from the date of this Judgment, with the date and time of the exam to be intimated to each of the 6 Respondents herein at least one month in advance.

(ii) For those of the 6 Respondents who qualify in the freshly held Tier-II

exam, further steps including document verification, etc., will be completed within a period of 15 days of the declaration of the Tier-II exam results and appointment letters will be issued to such of those who satisfy all these processes, within a further period of 15 days thereafter.

(iii) It will be made clear in the above appointment letter that the Respondents' appointment would be subject to any subsequent development in the form of the ongoing investigations by the ACB.

59. The writ petitions are disposed of in the above terms. The pending applications are also disposed of.

JANUARY 13, 2020
Tr

S. MURALIDHAR, J.

TALWANT SINGH, J.