
(2019) 07 DEL CK 0402

In the Delhi High Court

Case No : Civil Writ Petition No. 1846 Of 2016, Civil Miscellaneous Application
No. 7907 Of 2016

Centre For Policy Research

APPELLANT

Vs

Airport Authority Of India

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406

Citation : (2019) 07 DEL CK 0402

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Jayant Bhushan, Rahul Narayan, Shashwat Goel, K.K. Rai, Digvijay Rai, Chetana Rai, Anshul Rai, Ramkrishna Veerendra, Aman Yadav

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

1. The petitioner is a society registered under the Societies Registration Act, 1860. It impugns an order dated 20.10.2015 (hereafter 'the impugned order') passed by the respondent (Airport Authority of India - hereafter 'AAI') debarring the petitioner from taking up any recruitment exercise for AAI for a period of three years.

2. It is further stated in the impugned order that the decision to further debar/blacklist the petitioner would be reviewed after the outcome of the investigations by the Crime Branch, Delhi Police. The petitioner was engaged by AAI, in terms of the letters dated 19.03.2012 and 10.07.2012, to conduct written examinations for recruitment of personnel to various disciplines. The advertisements (Advertisement Nos. 1/2012 and 2/2012) to fill up 917 vacancies in 35 cadres of AAI were published and the petitioner was charged with the function of carrying out the written examinations for recruitment against the said advertisements. It is alleged that there were certain irregularities in the recruitment process and the

marks awarded to the candidates belonging to general category were manipulated in favour of a set of candidates from the Delhi Region.

3. The recruitment process against the examinations conducted by the petitioner was cancelled by AAI.

4. AAI also filed an FIR against the petitioner, which is pending investigation. And, the petitioner was also debarred from taking up any recruitment exercise for AAI in terms of the impugned order.

5. The petitioner has assailed the impugned order on, essentially, two grounds. It is stated that the allegations against the petitioner are premised on an investigation report furnished by the Directorate of Vigilance but a copy of the same was not furnished to the petitioner. It is contended that in the circumstances, the petitioner had no opportunity to counter the allegations made in the said report and the impugned order, which is founded on the said report, has been passed in violation of the principles of natural justice.

6. Second, it is submitted that the impugned order is unreasoned to the extent it rejects the petitioner's explanation/response to various alleged irregularities, without indicating any reasons for such rejection. The petitioner has also challenged the report contending that the conclusions drawn by the Directorate of Vigilance were not supported by the analysis as reflected therein.

7. The petitioner claims that it is one of the India's leading think tanks in public policy, since 1973. The petitioner claims that it has been assisting various public sector/government organizations in the recruitment of personnel to different posts since 1981. The petitioner claims that it has successfully conducted many written tests on behalf of the public sector/government organizations over the past thirty-five years and apart from this case, there has been no allegation against the petitioner of any irregularity or manipulation. The petitioner claims that it enjoys an unblemished reputation, which is now sullied by the action taken by AAI.

8. The petitioner has been conducting examinations on behalf of AAI from the year 2006 onwards. On 06.03.2012, AAI appointed the petitioner to undertake the task of formulating question papers, conducting examination in Delhi and evaluation of answer sheets for recruitment to various disciplines, namely, Junior Executive (PR), Junior Executive (HR), Junior Executive (Civil), Junior Executive (Electrical), Assistant Manager (Security) and Junior Executive (Security).

9. On 29.05.2012, AAI sent a letter conveying its approval of the rates for specified tasks. The petitioner was also informed that AAI had decided that in the first place, written examinations would be conducted for recruitment of Junior Engineer, ATC and Junior Engineer, Electronics.

10. In the meantime, on 01.03.2012, AAI published an advertisement on its website inviting applications for various posts in sixteen disciplines (Advertisement No. 02/2012). The said advertisement was also published in daily

newspapers on 06.03.2012. The said advertisement indicated that there were twenty vacancies to be filled for the post of Junior Engineer, ATC.

11. Initially, the closing date for applications was 01.04.2012 but the same was subsequently extended to 30.04.2012.

12. The recruitment exercise for filling up vacancies against Advertisement No. 01/2012 was completed in the early part of January, 2012. Advertisement No. 02/2012 was issued for filling up 588 vacancies at E-1, E-3 and E-6 levels for the post of Junior Executive, Manager and Deputy General Manager respectively in thirty-three grades, including twenty vacancies for the post of Junior Executive (IT).

13. After the written examinations were conducted, AAI constituted an Interview Board for conducting the interviews of the short-listed candidates and evaluating them on the said basis. The number of candidates called for the interview numbered approximately two and a half times the number of vacancies.

14. After the results were declared, the Chairman of AAI noticed that a disproportionately large number of candidates from the Delhi Region were selected. Sometime in February 2013, the matter was referred to the Central Vigilance Officer (CVO) for clearance and by a note dated 08.02.2013, the CVO called for various documents and information regarding the recruitment exercise against the Advertisement No. 02/2012.

15. The CVO submitted a note indicating that the investigation was under process but it, prima facie, appeared that the role of the petitioner was not above board.

16. Pending further investigations, the Chairman, AAI decided to defer the process of recruitment pursuant to the results declared in the year 2013.

17. Thereafter, a notice was put up by AAI on its website stating that for administrative reasons, the recruitment process relating to Advertisement No. 02/2012 had been put on hold.

18. AAI also constituted an Enquiry Committee which was held by the Executive Director (Technical) to examine whether the cancellation of the examination process was warranted. On 07.12.2013, the Enquiry Committee submitted its report recommending that the process of the examination be held afresh without involving the petitioner.

19. In the meantime, one of the successful candidates filed a writ petition captioned *Vikas Bhardwaj v. Airport Authority of India: W.P.(C) 399/2014*. In the said petition, this Court directed AAI to consider the report of the Enquiry Committee and take an appropriate decision in the matter in a time bound manner.

20. It is stated that the Enquiry Report was accepted by the competent authority of AAI on 31.01.2014 and thereafter, AAI issued a notice dated 21.03.2014

declaring its decision to conduct the selection process afresh for the posts advertised by Advertisement No. 02/2012 dated 01.03.2012.

21. In the meanwhile, AAI issued a show cause notice dated 19.08.2013 calling upon the petitioner to show cause as to why action should not be taken against the petitioner including debarring it from participating in the tender floated in future for any recruitment exercise. In the said show-cause notice, it was alleged that (i) AAI had requested the petitioner for copies of the question booklet used for the written examination but the petitioner had failed to submit the same; (ii) in some cases, complete documents had not been supplied; (iii) attendance sheets did not bear the signature of the candidates; and (iv) certain OMR sheets of candidates in respect of Junior Executive (Civil) and Junior Executive (Electrical) were not available. The said show cause notice also stated that the matter is under investigation.

22. The petitioner responded to the said show cause notice by the letter dated 04.09.2013, stating that the question booklets are preserved only for a period of sixty days after the declaration/submission of results and thereafter, the same are weeded out on account of paucity of space. The petitioner further stated that this process was followed consistently since the past six years and AAI had never called upon the petitioner to preserve the booklets at any stage. It was also stated by the petitioner that AAI used to destroy the question booklets immediately when such examinations were conducted by AAI; that is, prior to the same being outsourced to the petitioner. The petitioner also refuted the allegation that it had not supplied all the other documents, viz, attendance sheets, admit cards and OMR answer sheets to AAI.

23. In view of the aforesaid allegations, AAI also withheld the payment due to the petitioner.

24. It is stated that on 24.04.2014, the Vigilance Directorate submitted a preliminary report to the Competent Authority (AAI). It is stated that thereafter, there was a rethink on the part of AAI and on 19.11.2014, AAI decided to scrap the entire recruitment process undertaken pursuant to Advertisement No. 02/2012 and issue fresh advertisement.

25. On 11.02.2015, AAI issued another show cause notice to the petitioner calling upon the petitioner to show cause as to why the petitioner not be debarred from participating in the tender process in future and to withhold the balance amount due to the petitioner on account of alleged lapses as specified in the notice. The show cause notice contained several allegations against the petitioner. It was alleged that the petitioner had been very casual in its approach in conducting written examinations. It was also stated that investigations had been carried out which revealed that the examination scores had been manipulated for selection of the pre-determined candidates belonging to the Delhi Region.

26. On 26.03.2015, the petitioner sent a response to the said notice through its

advocate, countering all allegations made in the show cause notice. In addition, the petitioner also demanded that its outstanding dues be cleared. AAI did not accept the petitioner's response and passed the impugned order debarring the petitioner for a period of three years in the first instance.

27. In the meanwhile, an FIR, being FIR No. 62/2015 dated 27.04.2015 under Sections 406/120B IPC, was also registered on a complaint made by AAI and it is stated that the same is still pending investigation.

28. It is also relevant to state that in the meanwhile, several successful candidates had approached this Court by filing writ petitions, inter alia, challenging the decision of AAI to conduct a fresh examination. The said writ petitions (W.P.(C) 2204/2014 and other connected matters) were dismissed by the learned single judge by a common judgment dated 25.01.2016. The appeals preferred by some of the candidates (LPA No. 168/2016 and other connected matters) were also dismissed by the Division Bench of this Court by a judgment dated 31.03.2016.

Discussions and Conclusion

29. At the outset, it is necessary to note that the petitioner has already suffered the punishment imposed on it and the period for which the petitioner was initially debarred from participating in any tender invited by AAI for the recruitment process - that is, three years from the date of the impugned order - has since expired. The petitioner has, nonetheless, pursued this petition as it does not desire to suffer the ignominy of being blacklisted by AAI. It is well accepted that the punitive measure of blacklisting casts a slur and stigma on the person blacklisted. This also adversely affects the blacklisted entity from pursuing its business on account of loss of reputation and goodwill. It is, thus, necessary that the person being blacklisted is provided full opportunity of meeting the allegations against it. This is to ensure that the authority blacklisting any person does so only after examining all facets of the matter.

30. Keeping the aforesaid in mind, this Court may now proceed to examine the allegations made in the show cause notices issued to the petitioner. The first show cause notice was issued to the petitioner on 19.08.2013, inter alia, alleging that the petitioner had not provided the question booklets for the written examination since the same were weeded out while the recruitment process was still under way. It was alleged that the said act was unauthorized as no instruction for weeding out the question booklets was issued by AAI. It was alleged that the complete set of documents had not been provided and the attendance sheets furnished by the petitioner did not bear the signatures of the candidates. These allegations were also reiterated in the subsequent show cause notice issued on 11.02.2015.

31. In the show cause notice issued on 11.02.2015, AAI had informed the petitioner that an independent investigation had been carried out by the Directorate of Vigilance in respect of the recruitment for the post of Junior

Executive (IT). The petitioner was also informed that the Directorate of Vigilance had observed that a set of candidates from the Delhi Region who either belong to the State of Haryana or had obtained their qualifying degree from the said State, had scored 20% higher marks in the written examination in their respective categories compared to candidates from any other State/Region. It was also stated that performance of the said candidates in their qualifying degrees and interviews was much lower than the marks obtained in the written examinations. It was further stated that the result of the investigation had revealed that majority of the selected candidates in the general category, were pre-determined by manipulation of their scores obtained by them in their written examinations. AAI had also stated that it appeared that the candidates had been supplied the questions prior to or during the examination, as some of the questions had been deliberately answered incorrectly so as to restrict their marks in the written examinations. It was found that those candidates were not suitable for the post considering the academic credentials and their performance during the interview.

32. In addition to the allegation regarding manipulation of marks awarded in favour of candidates belonging to a certain region, AAI had also alleged that the petitioner had been very casual in its approach in conducting the written examination on account of various irregularities. The relevant extract of the show-cause notice, setting out the various alleged irregularities, is reproduced below:-

"a) In the column of OMR sheets name, roll No., booklet series and Test Form No.etc., has been found to be filled by the candidates in ink or pencil as per their desire, no clear cut instructions is given to the candidates in respect of these columns.

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

c) The OMR sheets supplied were not having Serial Nos.

d) The marking of the answers in the OMR sheet is done by the candidates by darkening the circles with HB pencils, which can be tampered / altered in absence of proper checks like providing a photocopy / self carbon copy of the OMR sheets at the exam centres of AAI observers.

e) No column was provided for mentioning the Roll No. on test booklets to avoid exchange of the test booklets by candidates.

f) Test Date and Post code was not mentioned on test booklets.

g) There was no instruction on wrong answer or negative marking in the test booklet.

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

i) No instructions were given in the test booklets for filling up the OMR Sheets.

j) Answer Keys submitted by the agency to Dte. of HR in a sealed cover, it is

observed that same is not certified or countersigned by the authorized signatory.

k) Correct answer is not given / provided against one question i.e. Booklet Series A-Q.No.14, B-Q.No.7, C.Q.No.39 & D-Q.No.24. However, It is found that the agency has evaluated the OMR sheets by taking option 3 as correct answer for this specific question. This shows that the agency's casual approach during evaluation.

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

m) Attendance sheets were not bearing candidate's signature,

n) Some of the OMR sheets in respect of JE(Engg-Civil/Elect) were not available."

33. Insofar as the allegations regarding various irregularities are concerned, the petitioner responded in detail providing its explanations in regard to the procedure adopted. The petitioner also responded to the allegations regarding manipulation of marks to favour certain set of candidates. The relevant extract of the letter dated 26.03.2015 setting out the petitioner's response in this regard, is reproduced below:-

9. The sheer arbitrariness and unfairness of these allegations, which are denied in totality, can be gathered from the following indisputable facts. Firstly, our Clients were obligated to conduct exams and issue results as per specifications and per the past established practices. The AAI was well aware of our past practices and specifications and never questioned the same prior to the Notice under Reply despite the long standing relationship between the parties. Our Clients cannot be blamed for the fact that AAI in this particular selection was not happy with the quality of the candidates who cleared the exams but did not perform well in interviews.

10. Secondly, the serious allegations as regards leaked question papers has been raised for the first time 2 years after the results were declared and sent to the AAI. Thirdly, these allegations seem to be the result of the allegedly "independent investigation" carried out by the "Directorate of Vigilance" that has not thought it fit to even talk to our Clients who were completely unaware of any investigation and who cannot vouch for the accuracy of the results, or the methodology adopted by this Directorate.

11. From a perusal of the allegations, this serious charge is based entirely upon the "investigation" of a "sample" test for Junior Executive (IT) and without regard to all the other exams for various posts conducted by our Clients. Further, from the Notice under Reply, it appears that this conclusion is based entirely upon the intuition that certain candidates have received more marks in the written test in comparison to their marks in their degrees. It is submitted that there are any number of explanations for this and this cannot be conclusive proof or even

prima facie proof of leaked question papers. One entirely plausible explanation, and there are several, is that the merit lists were drawn on the basis of combined marks of candidates in the general knowledge, general aptitude, general intelligence, English and technical sections. 50% weightage was given to these general aptitude section and 50% to the technical section. No qualified cut-offs were prescribed separately for General aptitude section and Technical section. In a meeting with AAI officials, in order to select good candidates, we suggested that the total number of questions be increased from 100 to 150 and that separate cutoffs be prescribed for technical section, which was not implemented. This could have resulted in some discrepancy between the marks scored by candidates in their qualifying examination and marks scored in the present test. That some candidates who perform well in written tests do not always perform well in the interviews is a fact that is well known enough to be a cliché. Further, the candidate's ability to express his/her views orally or on paper was not tested in these written examinations containing objective questions. Perhaps a descriptive question paper containing essay writing, comprehension would have tested these traits of the candidates. As regards the fact that such candidates performed poorly in their academic degrees, again, this is hardly unusual as plenty of persons work harder for entrance exams than academic ones and it is not written in stone that if a candidate performs poorly in one exam he cannot do better for others. The allegation that some questions were "deliberately" marked wrong seems to be a mere allegation belatedly raised and without any proof."

34. It is clear from the above that the petitioner was fully aware that the allegations raised by AAI were premised on an investigation report furnished by the Directorate of Vigilance. The petitioner also responded to the same, however, the petitioner did not request for a copy of the report and proceeded to give its representation.

35. As explained by the Supreme Court in *Gorkha Securities Services v. Govt. (NCT)*: 2014 SCC Online SC 599, "the fundamental purpose behind serving a Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet.". In the present case, AAI had informed the petitioner of the allegations levelled against it. However, AAI had not forwarded a copy of the investigation report, which contained the analysis of scores on which such conclusion was founded. The question whether furnishing such report was necessary cannot be answered without referring to its contents.

36. At this stage, it would be necessary to refer to the relevant passages of the investigation report which, are set out below:-

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

4.2.4 The emails to the candidates requesting to download the hall ticket were

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

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

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

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

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

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

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

xxxx xxxx xxxx xxxx

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

6.2.1.1 11 out of 11 General candidates, 4 out of 5 OBC candidates, 2 out of 3 SC candidates and 1 out of 1 ST candidate selected from the post are from Delhi

Region. Out of 20 candidates selected 14 candidates are either from Haryana state or have obtained their qualifying degree from this state.

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

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

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

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

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

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

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

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

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

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

6.2.2.5 The presence of the candidates of Haryana region or having qualifying degree from Haryana in the list of unsuccessful candidates is very low i.e only 5 candidates out of 36 and are mentioned in Para 6.2.2.2, 6.2.2.3 and 6.2.2.4 of the report. These 5 candidates have scored up to 20% more marks than other

candidates in their respective categories but were not selected due to very poor marks in interview or being absent. These candidates could have been selected if they had scored even 50% marks in the interview.

6.2.3 Majority of the general candidates finally selected for the posts appears to be predetermined candidates by virtue of their high scores in written examination. The analysis of the results indicates that the marks of the written examination are manipulated to favour a set of candidates mostly belonging to Haryana state or studied there. These candidates are otherwise not academically sound and does not appear suitable for the post considering their credentials and scores in interview.

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

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

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

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

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

Center Name

Center Code

Total Applicant

% of total Candidates appeared for Written test

Ahmadabad

10

641

144 (22.06%)

Allahabad

7

948

222 (23.42%)

Chennai

4

3533

647 (18.3%)

Delhi

1

8438

1962 ((23.25%)

Guwahati

8

219

36 (16.43%)

Hyderabad

5

3164

440 (13.91%)

Kolkata

3

1753

370 (21.11%)

Mumbai

2

1354

244(18.02%)

Nagpur

9

1007

155 (15.39%)

Trivandrum

6

2004

206 (10.28%)

Total

23061

4426

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

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

. % of Delhi Region candidates finally selected i.e 18 candidates out of 20 : 90%

xxxx xxxx xxxx xxxx

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

i. In the column of OMR sheets name, roll No., booklet series and Test Form No. etc., has been filled by the candidates in ink or pencil as per their desire, no clear cut instructions is given against these columns.

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

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

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

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

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

c. Reconciliation of final result with the OMR sheet.

7.2.3 The marking of the answers in the OMR sheet is done by the candidates by

darkening the circles with HB pencils, which can be tempered/alterd with in absence of proper checks like obtaining a photocopy of the OMR sheets at the exam centers by AAI observers.

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

Roll No.

Name

Place of Residence

Marks obtained in written exam

Wrong answers

Sl. No. of wrong answers having same option of the candidates who have scored higher marks in written exam

110487 Successful

Mona Taneja

Karnal, Haryana

101

17

21 (4) 26 (3) 29 (2) 33(3) 45 (4) 58 (3) 72(4) 73(1) 82 (3) 87 (4) 102(2) - 10 answers

111479 Successful

Vineet Aswal

Bahadurgarh, Haryana

88

32

21(4) 26(3) 29(2) 33(3) 45(4) 58(3) 72(4) 73(1) 82 (3) 87(4) 102(2)-10 answers

114555 Unsuccessful

Sumit

Jind, Haryana

96

24

21(4) 26(3) 29(2) 33(3) 45(4) 58(3) 72(4) 73(1) 82 (3) 87(4) 102(2)-10 answers

111091 Successful

Sandeep Chaurasia

Kanpur, U.P

95

25

1(4) 26(3) 29(2) 45(4) 69(1) 72(4) 73(1) 82 (3) 87(4) 102(2) 117(3) 119(1)-10 answers

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

Roll No.

Name

Place of Residence

Marks obtained in written exam

Wrong answers

Sl. No. of wrong answers having same option of the candidates who have scored higher marks in written exam

112292 Successful

Ms. Joyti Yadav

Gurgaon, Haryana

98

22

14(4) 22(2) 26(3) 38(4) 51(3) 62(4) 66(2) 72 (3) 77(4) 98(2) 118 (4) 119(1)-12

114864 Unsuccessful

Anurag Duhan

Rohtak, Haryana

99

21

14(4) 22(2) 26(3) 38(4) 51(3) 62(4) 66(2) 72 (3) 77(4) 98(2) 118 (4)
119(1)-12 Answers

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

Roll No.

Name

Place of Residence

Marks obtained in written exam

Wrong answers

Sl. No. of wrong answers having same option of the candidates who have scored higher marks in written exam

111946

Apoorva

Tri Nagar, Delhi

101

19

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

112406

Sunil Phour

Panipat, Haryana

98

22

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

108082

SachinPunia

Gurgaon, Haryana

100

20

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

114866

Mahesh Yadav

Rewari, Haryana

91

29

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

109090

Vandana

Gurgaon, Haryana

92

28

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

107914

Manoj Choudhary

Delhi

103

17

8(3), 36(3), 39(2), 55(4), 78(4), 79(1), 82 (4), 83(1), 86(2), 97(4), 112(2)-11
answers

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

Sl. No. of the same questions in various series

A

B

C

D

Remarks

21

14(-7)

46(+25)

31(+10)

All the questions are same bearing different serial number depending upon the series of the test booklet. The serial numbers shown are mathematically related.

26

19(-7)

51(+25)

36(+10)

29

22(-7)

54(+25)

39(+10)

33

26(-7)

58(+25)

43(+10)

45

38(-7)

10(+25)

55(+10)

58

51(-7)

23(+25)
 8(+10)
 72
 62(-10)
 102(+30)
 82(+10)
 73
 63(-10)
 103(+30)
 83(+10)
 82
 72(-10)
 112(+30)
 92(+10)
 87
 77(-10)
 117(+30)
 97(+10)

*Deduct 60 if total exceeds 60

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

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

Sl. No. of the same questions in various series

A

B

C

D

Remarks

21 (4)

14(4)

46(4)

31(4)

The number within the bracket shows the sl. No. of the option marked by the candidate. All these candidates have marked same option for these questions irrespective of their series for which the answers are wrong.

26(3)

19(3)

51(3)

36(3)

29(2)

22(2)

54(2)

39(2)

33(3)

26(3)

58(3)

43(3)

45(4)

38(4)

10(4)

55(4)

58(3)

51(3)

23(3)

8(3)

72(4)

62(4)

102(4)

82(4)

73(1)

63(1)

103(1)

83(10)

82(3)

72(3)

112(3)

92(3)

87(4)

Ms. Mona Taneja

77(4)

Ms. Jyoti Yadav

117(4)

Sh. Manu Yadav

97(4)

Sh. Manoj Choudhary

The table shows that the candidates belonging to Haryana state or studied there or have scored higher marks in written exam have marked same options for the 10 wrong questions irrespective of the series. Thus it can be inferred that predetermined candidates were supplied with answer keys during or prior to the examination resulting in same options for wrong answers. Such type of similarity while marking one of the option out of four is abnormal which cannot take place without outside help during or prior to examination.

xxxx xxxx xxxx xxxx

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

- a. No column was provided for mentioning the Roll No. hence; there exist possibility to exchange the test booklets for copying and also providing the answers from outside.
- b. Test Date and Post code was not mentioned.
- c. There was no instruction on wrong answer or negative marking.
- d. Instruction for use of mobiles/calculators or electronic gadgets is not mentioned in the test booklet.

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

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

8.2.2 The pattern of the question paper for IT discipline is kept at par with non technical disciplines i.e 50% questions from the IT discipline and 50% from General Knowledge/Aptitude/Reasoning/English etc. Whereas in the other technical disciplines 70% of the questions were from technical side and 30% questions were from General Knowledge/Aptitude/Reasoning/English etc. The treatment of IT as non technical discipline is not justified and it appears that no thought was given for deciding pattern of question paper for this highly technical discipline.

8.2.3. The questions asked in the written test were randomly checked and following has been noticed:

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

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

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

xxxx xxxx xxxx xxxx

"Conclusion

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

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

possible manipulation:

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

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

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

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

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

37. It is seen from the above that although AAI had, in the show cause notice, called upon the petitioner to respond to the allegation regarding manipulation of the recruitment process to favour a set of candidates belonging to the Delhi Region; it had not specifically indicated the analysis and the findings on which such conclusion was drawn. The petitioner was only informed that a set of candidates of the Delhi Region, who either belonged to Haryana or had studied there, had scored 20% higher marks in the written examination. Thus, the petitioner had no opportunity to deal with the findings as reported in the investigation report.

38. The conclusions expressed in the aforementioned investigation report are, undoubtedly, serious. The allegation that the petitioner has been a party to manipulation of marks awarded to certain candidates or had been negligent has adverse consequences on the petitioner. It is possible - as is contended on behalf of the petitioner - that the same, effectively, disables the petitioner to bid for performing such work for other organizations. Thus, it is imperative that it be concluded with some degree of certainty that the petitioner is guilty of the allegations leveled against it.

39. Admittedly, the principal allegation made against the petitioner is founded on the investigation report. However, a careful reading of the aforesaid report does indicate aspects that would require further clarification and deliberation before

any person can be held guilty of the allegations as indicated in the conclusions expressed in the said report.

40. It is alleged that a disproportionate number of candidates from the Delhi Region had been selected on account of the marks obtained by them in the written examination. However, paragraph 6.2.8 of the investigation report does not establish the same. It indicates that about 36.68% (8438 candidates from a total of 23061 candidates) of the applicants were from Delhi. But a larger proportion of the candidates from Delhi appeared for the examination. Approximately 44% of the total candidates that appeared in the written examination were from Delhi Region. The show-cause notices issued to the petitioner do not allege any role of the petitioner in this regard. Approximately 69.6% of the Candidates that were called for the interview were from Delhi Region. This does support the view that candidates from Delhi Region had performed better on an average, in the written examination, than candidates from other parts of the country. However, it is material to note that 90% of the candidates finally selected, after the interview, were from the Delhi Region. This could lead one to believe that the candidates from Delhi Region also performed better in the interviews. It is also possible that although the candidates from the Delhi region did not perform as well in the interview in comparison to candidates from rest of the country, the proportion of the candidates from the Delhi Region increased due to a large gap in their average marks obtained in the written examination. The investigation report does not indicate any detailed analysis in this regard.

41. Secondly, it is alleged that some candidates were supplied the answer keys and they had deliberately answered the same set of ten questions incorrectly so as to avoid detection (paragraph 7.2.4 of the investigation report). The tabular statement indicating the analysis to arrive at the said conclusion is, clearly, not sufficient to support the said conclusion. First of all, the sample size is only four candidates and one of them was not successful in being selected. This is clearly an insufficient sample to arrive at the sweeping conclusion. Secondly - and more importantly - the analysis does indicate that four candidates had answered the same ten questions incorrectly; but those ten questions are not the only questions incorrectly answered by them. One candidate (Ms Mona Taneja) had answered seventeen questions incorrectly; the second (Mr Vineet Asiwali) had answered 32 questions incorrectly; the third (Mr Sumit) - who was unsuccessful - had answered twenty four questions incorrectly; and the fourth (Mr Sandeep Chaurasia) had answered twenty questions incorrectly. The conclusion that the all of these candidates knew the question paper in advance and had deliberately answered the same ten questions incorrectly is, to be most charitable, wildly speculative.

42. It is not necessary for this court to examine the investigation report in any further detail, as it would be apposite for the concerned authorities to take a view after the petitioner has had an opportunity to respond to the same.

43. It was contended by Mr K.K. Rai, senior counsel appearing for the respondent, that the investigation report need not be examined afresh as a Coordinate Bench of this Court, as well as the Division Bench of this Court, had examined and upheld the same in petitions and appeals filed by successful candidates. This contention is unpersuasive, essentially, for two reasons. First, that the petitioner was not a party to those petitions/appeals. And second, the scope of controversy in those petitions was materially different. The investigation report has, undeniably, cast a doubt as to the results of the examination. Clearly, in cases where the employer has a justifiable doubt as to the selection process, its decision to ignore the results and undertake a fresh process cannot be questioned. In this case, persons from Delhi Region had fared better than the candidates from rest of the country not only in the written examination but, as noticed above, possibly in the interview as well. The investigation report provided the Competent Authority reasons not to trust the results of the selection process. This is materially different from concluding that the petitioner was involved in leakage of question papers and manipulation of marks. A punitive measure of blacklisting cannot be taken against a person because there is a doubt as to his conduct. The authority imposing such punishment must be reasonably certain, after taking into account all relevant facts, that the concerned person/entity has been errant and his/its conduct warrants imposition of the punishment.

44. Mr Rai relied upon the decision of the Supreme Court in *M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.*: (1975) 1 SCC 70 and *Grosons Pharmaceuticals (P) Ltd. and Anr. v. State of U.P. and Ors.*: (2001) 8 SCC 604 in support of his contention that AAI was not required to supply a copy of the investigation report or any other material considered by the AAI to blacklist the petitioner. He submitted that the only requirement to be complied before awarding the punishment of blacklisting was to afford the petitioner an opportunity to be heard. He earnestly contended that the principles of natural justice did not require that the investigation report be furnished to the petitioner. The said contention is unpersuasive. It is well settled that there is no straightjacket formula when it comes to applying the principles of natural justice. The requirements of principles of natural justice are moulded by the facts and circumstances surrounding each case. It is imperative that a person who is visited with any punishment has a fair opportunity to contest the allegations levelled against him, so as to persuade the concerned authority not to impose the punishment proposed. This is the principle that must guide the authorities for evolving a fair procedure. In the present case, AAI had not relied on any other material other than the investigation report including the conclusions drawn therein, to level the allegations as made in the show cause notices. In the facts of this case, it was apposite for AAI to have shared the report with the petitioner in order to afford the petitioner a fair opportunity to meet the allegations. Since the allegation was solely based on empirical data, the petitioner ought to have been given an opportunity to explain the same.

45. It is noted that a considerable period has elapsed since the FIR was filed,

however as of yet, no charges have been framed against the petitioner. In the meantime, the petitioner has suffered the stigma of being an alleged manipulator without having any real opportunity to contest the analysis or material on the basis of which such allegations are founded.

46. It is seen that several other irregularities have also been pointed out in the show cause notice. The petitioner had responded to the same, however, the petitioner's response has been rejected without indicating any reason but by merely stating that the same is unsatisfactory. In *M/s Deccan Mechanical and Chemical Industries Pvt. Ltd. & Anr. V. NTPC Ltd. & Anr.*: W.P.(C) 93/2014, decided on 15.01.2014, a Coordinate Bench of this Court had held such an order to be an unreasoned one. The Courts have observed in various decisions that blacklisting has serious adverse consequences on the person blacklisted. It is, thus, imperative that such a punishment is imposed only in cases where it is warranted. Such a decision must be informed by reason.

47. In this view, it would be necessary for the authority to indicate, however brief, the reasons for rejecting the explanations with regard to the irregularities as alleged. Merely stating that the explanations were not satisfactory would not qualify the test of a reasoned order.

48. Given the aforesaid circumstances, this Court is of the view that it would be apposite that the petitioner be afforded an opportunity to respond to the investigation report and furnish its explanation.

49. In the aforesaid view, the impugned order is set aside and the matter is remanded to the concerned authority of AAI to decide afresh after affording the petitioner an opportunity of being heard. The petitioner is at liberty to submit a response/explanation in respect of the allegations made and the investigation report within a period of four weeks from, today.

50. The petition is allowed in the aforesaid terms. The pending application is also disposed of.