

(2022) 09 DEL CK 0183

In the Delhi High Court

Case No : Civil Writ Petition No. 949, 7893 Of 2019, 10668 Of 2022, Civil Miscellaneous Application No. 31023 Of 2022

Dinesh Kumar

APPELLANT

Vs

High Court Of Delhi & Ors.

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16(1), 226

Citation : (2022) 09 DEL CK 0183

Hon'ble Judges : Suresh Kumar Kait, J;Chandra Dhari Singh, J

Bench : Division Bench

Advocate : Jayant K. Mehta, Madhavi Khare, Apoorva Bhumes, P.D.V. Srikar, Abhishek Tiwari, Rajshekhar Rao, Rajat Aneja, Chandrika Gupta, Misha Kumar, Areeb Amanullah, Harshil Wasoon, Ankur Chhibber, Nikunj Arora, Karuna Chhatwal, Kavita Rathore, Tushar Mahajan, Rohan Yadav, Bhavan Mahajan, Akshya, Karan Chhibber, Mudit Ruhella, Archit Arora, Gunjan S. Jain

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The High Court of Delhi (hereinafter referred to as "this Court") vide Notice bearing No. 276/Estt/E-2/DHC dated 02.06.2016, invited applications from the eligible officers of this Court and subordinate courts to fill up 27 vacant posts of Private Secretaries in the pay band of Rs.16,800-Rs.39,100 + Grade Pay Rs.6,600/- against 75% test quota as per Clause- b(i) of Item No.6 of Schedule II to Delhi High Court Establishment (Appointment and Conditions of Service) Rule, 1972. The written examination and skill tests were held on 04.07.2016 and 05.07.2016 respectively and the result thereof was declared on 22.12.2016. The successful candidates were interviewed on 19.01.2017 and 25.01.2017 respectively and the final merit wise result of successful 27 candidates was uploaded on the intranet of this Court on 30.01.2017.

2. Mr.Dinesh Kumar, the petitioner in the above captioned first and second

petitions [W.P.(C) 10668/2022 and W.P.(C) 949/2019] was appointed Private Secretary in terms of recommendations of the "Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017" having secured his place at Serial No.25.

3. Petitioner No.1-Mr.Kunal Muggu and petitioners No.2 to 21 in the above captioned third petition [W.P.(C) 7893/2019] were also appointed as Private Secretaries having secured their respective places in terms of recommendations of the "Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017" .

4. During pendency of recruitment process and pursuant to declaration of the results of the written examination and skill test and prior to declaration of 'Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017', a few candidates obtained copies of their answer sheets under the Right to Information Act, 2005 (henceforth referred to as the "RTI Act") and requested for re-evaluation of their answer sheets by filing representations. A few other non-selectees also invoked the writ jurisdiction of this Court seeking re-evaluation of their results subsequent upon declaration of the results dated 30.01.2017. Thereafter, answer sheets of 13 candidates were re-evaluated and a revised merit list dated 23.10.2018 was notified. The establishment of this Court once again notified another revised merit list dated 17.12.2021.

5. The petitioners in the above captioned three petitions, who are the appointee as per the original 'Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017', have challenged the revised merit lists dated 23.10.2018 and 17.12.2021 in these petitions.

6. Before we consider the prayers in these petitions, we briefly note the facts emerging from the record thereof. This Court vide Notice bearing No. 276/Estt/E-2/DHC dated 02.06.2016, invited applications from the eligible officers of this Court and subordinate courts for recruitment to the post of Private Secretaries for filling up 27 vacant posts and conducted the written examination and skill tests in respect thereof. Prior to declaration of final merit wise result of 27 successful candidates on 30.01.2017, three candidates, namely, Ms.Sangeeta Anand, Ms.Garima Madan and Mr.Amit Arora, filed their representations dated 23/24.12.2016 seeking rechecking of their answer sheets, which was rejected by the competent authority vide order dated 18.01.2017 observing that "there was no provision for rechecking of answer sheets in the Delhi High Court (Appointment and Conditions of Service) Rules, 1972". Thereafter, Ms.Garima Madan obtained copy of her answer sheet under the RTI Act and made a representation dated 27.01.2017 requesting the competent authority to re-evaluate /re-check certain answers; grant her opportunity to appear in the interview and to put on hold final result of subjection examination. However, as noted above, the results were declared on 30.01.2017. Soon after declaration of the final result, Ms. Garima Madan, Ms.Sapna Sethi, Mr.Sumit Ghai and Ms.Sheetu Nagpal, after obtaining their copies of answer sheets under the RTI

Act, filed representations seeking re-evaluation of their answer sheets. These representations were considered by the Selection Committee for Appointment of Officers of the High Court and District Courts in the meeting held on 20.02.2017, wherein representation filed by Mr.Sumit Ghai was rejected, whereas Ms.Garima Madan & Ms.Sapna Sethi were awarded 04 additional marks and Ms.Sheetu Nagpal was awarded 02 additional marks.

7. Three out of the above four named representationists, preferred writ petitions i.e. Ms.Sheetu Nagpal [W.P.(C) 2723/2017], Ms.Sapna Sethi [W.P.(C) No. 2976/2017] and Mr. Sumit Ghai [W.P.(C) 2877/2017]. Besides, four more writ petitions filed by Mr.Durgesh Nandan [W.P.(C)4260/2017]; Mr. Vipin Kumar Rai [W.P.(C) 4156/2017]; Mr.Sunil [W.P.(C) 4159/2017] and Mr. Sreeram L. [W.P.(C) 4167/2017] were also filed. Subsequently, one more writ petition for the similar relief was filed by Mr.Amit Arora [W.P.(C) 7004/2017], which was heard by this Court along with afore-noted petitions.

8. On 17.05.2017, during the course of hearing in the afore-noted eight writ petitions, the Court was informed about recusal of two Judges from the Committee, who were considering the issues pertaining to the re-evaluation of the answer sheets in respect of and thus, this Court vide order dated 17.05.2017 observed and directed as under:-

"Having regard to the peculiar features of these cases, the Court is of the opinion that the Acting Chief Justice may consider taking an independent decision as to whether the award of marks in respect of the questions involved in these petitions requires to be reappraised independently. An appropriate decision in this regard may be taken before the next date of hearing."

9. Pursuant to the aforesaid order dated 17.05.2017 passed by this Court in writ petitions noted above, the then Hon'ble the Acting Chief Justice on 23.05.2017 constituted a Special Committee to decide the issues pertaining to the evaluation of certain questions in respect of the examination. The Special Committee in its meeting held on 10.07.2017 observed as under:-

"The Committee was informed that 14 candidates had filed representations challenging the evaluation of answers of various questions asked in the Written Examination in respect of Private Secretary Examination-2016 held on 04.07.2016. Although, the predecessor Committee had already decided 4 representations by partly allowing 3 representations and rejecting 1 representation, yet out of the said 4 representations, 3 of them feeling aggrieved with the decision of the committees, have filed Writ Petitions. The decision on the remaining 10 representations is yet to be taken. It was further informed that out of these 10 representations, 4 have filed writ petitions also which are pending before the Hon'ble Court. Thus, there are 13 candidates whose representations/writ petitions are pending.

In pursuance with the directions of the Hon'ble Court passed in W.P.(C) Nos. 2725/2017, 2877/2017, 2976/2017, 4156/2017, 4159/2017, 4167/2017 and

4260/2017, the Committee resolved to recommend for appointment of an independent Examiner to carry out an exercise for re-evaluation of the answers given by the candidates in the Written Examination held on 04.07.2016. The exercise, however, has to be restricted to aforesaid 13 candidates only whose representations/ writ petitions are yet to be decided for the obvious reasons that other candidates by not making representations, have accepted the marks awarded to them. Such exercise will further be restricted to evaluation of answers of only such candidates either by way of representations or writ petitions.

As a result of re-evaluation, it is possible that one or more of the candidates so re-evaluated secure more than the candidates already appointed as Private Secretary. The Committee is also aware of the fact that in such a situation, such re-evaluated candidate may acquire a right to be considered for appointment to the post of Private Secretary. However, this is a matter which would have to be considered by the Hon'ble Court hearing the Writ Petitions, which may perhaps have to implead the candidates, already appointed whose appointment may be affected thereby."

10. In view of the aforesaid recommendations of the Special Committee, an independent examiner was appointed for re-evaluation of the answer sheets, which was restricted to 13 candidates, who had either filed representations or writ petitions, in the light of the fact that the other candidates, whether successful or unsuccessful, were deemed to have accepted the marks awarded to them. Also, the re-evaluation was restricted to the questions which were challenged by these respective candidates.

11. Though thereafter, another writ petition being W.P.(C) 8255/2017, titled as Saphalta Bhati Vs. High Court of Delhi, was also filed for the relief of re-evaluation of answer sheets, however, this Court vide order dated 15.09.2017 dismissed the same while holding as under:-

"4. This Court noticed that the other candidates – similarly situated – had represented prior to the present petitioner; they too had sourced information under the RTI Act but chose to approach the Court with promptitude. In the meanwhile, during the pendency of their writ petitions, several other employees had addressed representations. Taking an overall view of these circumstances, the Court had directed that not only the grievance of the petitioners, the grievance raised by the other representationists should be considered by the Special Committee.

5. In these circumstances, it is quite evident that the allegations or grievance with respect to the flawed marking was not an unknown phenomenon. Given the fact that the community of candidates was few (46) and they competed for 27 vacancies, the petitioner's inaction in approaching this Court on the ground that she was under the impression that all would be granted similar relief, is just one, i.e., of assumption. The Court is conscious of the fact that accommodation of 13

re-evaluated candidates' candidature would mean some element of disturbance with respect to the selected list of appointees. In these circumstances, adding further confusion to the process would not be justified.

6. In the peculiar facts and circumstances, it has to be held that the present proceedings are hit by delay and laches. The writ petition is therefore dismissed."

12. Thereafter, in the light of observations of the Special Committee in the meeting held on 10.07.2017, this Court disposed of the afore-noted eight writ petitions while holding as under:-

"The order sheets in all these cases would show that the Court was informed that a Special Committee was constituted to examine the issues, which had recommended re-evaluation of the answer sheets of the petitioners and six other representationists. It is stated today – pursuant to the previous proceedings that the re-evaluation of the answer sheets has been concluded.

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This Court is of the opinion that it would be appropriate that the Special Committee considers the report of re-evaluation and recommends the further course of action to be taken. The final outcome of either acceptance/partial acceptance or rejection of the re-evaluation exercise and the results shall be notified to the petitioners and other representationists at the earliest, preferably within two weeks from today along with the copy of the re-evaluated answersheets."

13. Accordingly, the answer sheets of the seven writ petitioners and six representationists were re-evaluated to the extent of questions of which the evaluations were challenged. The result of re-evaluation was reported as under:-

Writ petitioners/

Representationists

Marks secured earlier

Result upon re-evaluation

Ms. Krishna Bhoj

147

149

Mr.Dinesh Singh Nayal

135

142

Mr.Rajender Singh Karki

135

140

Mr.Kaushal Kumar Sachdeva

135

139

Mr.Sunil

129

139

Mr.Kamlesh Kumar

136

138

Ms.Shitu Nagpal

127

135

Mr. Vipin Kumar Rai

128

134

Mr.Sreeram L.

126

134

Mr.Sumit Ghati

128

134

Mr.Amit Arora

127

133

Mr.Durgesh Nandan

128

132

Ms. Sapna Sethi

122

129

14. On 12.09.2017, the Special Committee accepted the report of the examiner and directed the Registry to upload the result on the intranet of this Court and display it on the Notice Board for information of all concerned. The Committee also noted that out of 13 writ petitioners/ representationists, 05 were already selected as Private Secretaries in the result declared on 30.01.2017 and one- Mr. Amit Arora stood promoted as Private Secretary. The Committee also noted that in the re-evaluated result, 06 writ petitioners/ representationists, namely, Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai and Mr. Durgesh Nandan, had scored more than 130 marks i.e. the marks scored by Mr.Jitender Kumar, who was the last recommended candidate for the post of Private Secretary as per original merit wise result declared on 30.01.2017.

15. Thereafter, the then Hon'ble The Acting Chief Justice vide order dated 01.03.2018 observed as under:-

"25. As a result of the limited re-evaluation of answers of only the 7 writ petitioners and 6 representationists, that too limited to the question which were challenged, marks of all these persons increased. Some of the writ petitioners and representationists have now been marked higher in this limited evaluation than some of the selected candidates who stand marked as per the original evaluation only.

26. An unfortunate situation has resulted because of this partial re-evaluation.

27. Many of them were placed higher than the representationists. All of them had secured more marks than all the writ petitioners who had not been selected. Significantly, no re-evaluation of the other successful candidates was undertaken. The re-evaluation is also by a different evaluator. Therefore, there is very possibility of their marks also increasing proportionately.

28. The selected candidate stand promoted as back as on 30th of January, 2017. These facts do not appear to have been brought to the notice of the court which had directed the restricted re-evaluation.

29. A truly fair outcome would have resulted if all papers had been re-evaluated on identical standards applied by the same evaluator.

30. If such an exercise is now undertaken, it would result in unwarranted delay. Further appointments having been effected one year ago, it is difficult to set the clock back.

31. The Registry has reported that even on date there are 22 vacancies in the post of Private Secretary under 75% test quota in our court. Therefore, there is no difficulty with regard to appointment of those who stand qualified upon the limited re-evaluation without effecting the appointments made earlier. The issue which requires consideration is the issue of how the seniority of these persons is

to be fixed and whether any re-fixation is necessary.

The Registry is directed to place the matter before the aforesaid Committee”.

16. In pursuance of afore-noted recommendations of the Special Committee vide order dated 01.03.2018, the then Hon’ble The Acting Chief Justice vide order dated 07.03.2018, observed and held as under:-

“10. Significantly, as order hereinabove, the marks of all 13 candidates, who were re-evaluated, increased as a result of such re-evaluation. Out of the said 13 candidates, 8 candidates had earlier not been placed in the select list. Given the fact that the re-evaluation was done by a new examiner, different from the examiner who had evaluated the written tests of the earlier selected PSs, there is every likelihood, had the same examiner evaluated the answer sheets of the said earlier selected PSs, their marks would also have increased. Even for this reason, it would be unfair to the earlier selected PSs, who are working as PS since over a year as on date, to allow the said 8 PSs who had earlier not been placed in the select list to steal the march over them in seniority merely because, consequent to re-evaluation by a different examiner, their marks increased.

11. The sequitar to the above discussion would be that the increase in marks in the written test, consequent on re-evaluation, cannot confer any benefit of seniority to any candidate. Therefore, the only way to ensure complete and equitable justice to all the candidates would be to divide the 13 candidates whose written test were re-evaluated into two categories: viz

(i) The 5 already selected candidates whose papers were re-evaluated, would not still be entitled to be granted benefit of seniority vis-a-vis the other PSs who did not seek such re-evaluation because both the groups cannot be stated to be equally placed; the first group having availed the benefit of re-evaluation by a different examiner whereas the other group did not avail such benefit of re-evaluation by the said examiner.

(ii) The newly selected candidates, who were not selected as PS when the papers were originally examined, and became eligible to such selection only consequent on the re-evaluation of their papers by a different examiner, would be placed at the bottom of the select list (after the last successful candidate, namely, Mr.Jitender Kumar) as per their inter se merit, without disturbing the PSs who were earlier selected and who have been working as PS thereafter.”

17. Thereafter, the “Re-evaluated Result of Candidates Already Selected and Not Earlier Selected” was declared in the following manner:-

PRIVATE SECRETARY EXAMINATION-2016

RE-EVALUATED RESULT OF CANDIDATES (ALREADY SELECTED)

S

No.

Name of the candidate
Marks before re-evaluation
Marks increased on re-evaluation
Marks after re-
evaluation
Marks in interview
Total marks

1.

Krishna Bhoj

128

2

130

19

149

2.

Kamlesh

Kumar

116

2

118

20

138

3.

Dinesh Singh

Nayal

115

7

122

20

142

4,

Rajinder

Singh Karki

115

5

120

20

140

5.

Kaushal Kumar

Sachdeva

115

4

119

20

139

PRIVATE SECRETARY EXAMINATION-2016

RE-EVALUATED RESULT OF CANDIDATES (WHO WERE NOT SELECTED EARLIER)

S

No

.

Name of the candidate

Marks before re- evaluation

Marks increased on re- evaluation

Marks after re- evaluation

Marks in interview

Total marks

Remarks

1.

Sunil

111

10

121

18

139

Recommended
for Appointment

2.

Shitu

Nagpal

108

8

116

19

135

Recommended
for Appointment

3.

Vipin Kumar

Rai

109

6

115

19

134

Recommended for Appointment

4,

Sumit

Ghai

110

6

116

18

134

Recommended

for Appointment

5.

Durgesh

Nandan

110

4

114

18

132

Recommended

for Appointment

6.

Amit

Arora

109

6

115

18

133

Recommended

for Appointment

7.

Sapna Sethi

104

7

111

18

129

Not Recommended for Appointment having obtained lesser marks than the last selected

candidate

18. Consequentially, vide Notification bearing No.92/Estt-I/E-2/DHC dated 14.03.2018, Hon'ble The Acting Chief Justice recommended appointment of the afore-noted six candidates on the post of Private Secretary on the establishment of this Court "w.e.f. 12.03.2018 till further orders against vacant post of Private Secretary under 75% test quota". However, the said Notification also carried a note at the bottom, wherein it is mentioned as under:-

"1. The appointment of above mentioned officers will be on probation initially for a period of one year from the date of their appointment and expiry of the period of limitation shall not result in their automatic confirmation.

2. All the above mentioned officers would be placed at the bottom of the select list (after the last successful candidate, namely, Mr.Jitender Kumar) as per their inter se merit, without disturbing the Private Secretaries who were earlier selected and who have been working as Private Secretary thereafter.

XXXXXXXXXX "

19. Subsequently, the Establishment of this Court vide Order bearing No.888/Estt.E-2/DGC dated 17.09.2018 notified the names of 26 officers who had successfully completed their probation in the post of Private Secretary pursuant to their appointments on 30.01.2017.

20. Thereafter, ten representations were received by the Establishment of this Court, which were preferred by Mr.Amit Arora, Mr.Kaushal Kumar Sachdeva, Mr.Dinesh Nayal, Mr.Rajinder Singh Karki, Ms. Shitu Nagpal, Mr.Sreeram L., Mr.Vipin Kumar Rai, Ms.Krishna Bhoj, Mr.Durgesh Nandan & Mr.Sunil. The Special Committee in its meeting held on 01.10.2018, looked into these representations. However, request for re-evaluation of certain questions made by Mr.Rajender Singh Karki and Mr.Dinesh Singh Nayal, was declined by the Committee. In addition, the representations filed by Mr.Amit Arora, who had also prayed for grant of 'notional seniority' and also Mr.Rajender Singh Karki and Mr.Dinesh Singh Nayal, who had sought 'their placement according to their corresponding position by drawing a revised merit list' and also the other newly appointed candidates, namely, Mr.Sunil, Ms. Shitu Nagpal, Mr. Sreeram L., Mr. Vipin Kumar Rai and Mr.Durgesh Nandan, who had sought 'parity with all consequential benefits to the post of Private Secretary from the date when the other successful candidates were appointed to the post i.e. 30.01.2017', were also considered by the Special Committee on 01.10.2018.

21. In the meanwhile, some other successful candidates, who had already been appointed to the Post of Private Secretary vide original Merit Wise Result dated 30.01.2017, filed representations seeking re-evaluation of their answer sheets, however, the Special Committee vide its meetings dated 23.07.2018 and 01.10.2018 rejected those representations in view of the fact that they were neither representationists nor writ petitioners at the relevant point of time when the decision for re-evaluation was taken by the Committee and also in view of decision of this Court in Saphalta Bhati's case, they could not be granted relief of re-evaluation at that belated stage.

22. The Special Committee in its meeting held on 01.10.2018 noted the reasons cited by the above named representationists and recommended as under:-

"1. The candidates who have been appointed as Private Secretary in pursuance of the decision dated 12.03.2018 may be appointed as Private Secretary with effect from the date when other successful candidates were appointed, i.e. with effect from 30.01.2017 on notional basis. As regards Mr.Amit Arora who was promoted under 25% seniority quota on 01.08.2017 i.e. after 30.01.2017 but before the declaration of re-evaluated result on 12.03.2018, he may also be appointed as Private Secretary with effect from the date when other successful candidates were appointed i.e. with effect from 30.01.2017 on notional basis. All of them shall be entitled to notional seniority. However, the question regarding grant of consequential benefits is left open and will be decided in the next meeting.

2. Revised merit list which has been drawn up after taking into account the revised marks as per there-evaluation Reports submitted by the Independent Examiner and by the Committee in case of Mr. Amit Arora, is approved (Annexure-'A'). The same may be uploaded on the website of this Court.

23. Consequentially, a "Revised Merit List of Candidates who were Shortlisted For Interview in Private Secretary Examination-2016" was notified on 23.10.2018 and again, vide Notification No. 108/ESTT./E-2/DHC dated 15.01.2019, the establishment of this Court modified the Notifications dated 02.02.2017; 02.08.2017 and 14.03.2018 and notified the appointments to the post of Private Secretary on seniority basis in terms of marks obtained by each candidate.

24. Also, one of the candidates, namely, Sapna Sethi, who had not been selected in the first merit list and had sought re-evaluation by way of writ petition being W.P.(C) 2976/2017 along with other writ petitioners and her case was considered by the Special Committee, who vide order dated 01.03.2018 did not recommend her name for appointment to the post of Private Secretary for having secured 129 marks i.e. below the requisite marks of '130' secured by the last selected candidate as per original result list dated 30.01.2017. She preferred another writ petition being W.P.(C) 2863/2019 challenging her re-evaluation and seeking enhancement of marks. This Court directed to place her case for consideration before the Special Committee, which decided to enhance her marks, which

brought her above the cut off marks of 130. Based on the recommendations of the Special Committee, the then Acting Chief Justice approved her appointment to the post of Private Secretary and vide Notification bearing No. 291/Estt..E-2/DHC dated 07.03.2019 appointed her w.e.f. 30.01.2017 on notional basis. The establishment of this Court again issued a revised merit list dated 17.12.2021 i.e. the third "Revised Merit List of Candidates Who Were Shortlisted For Interview in Private Secretary Examination -2016".

25. Aggrieved against the Revised Merit List dated 23.10.2018, petitioner-Dinesh Kumar preferred a writ petition being W.P.(C) 949/2019 [the second captioned petition] praying for issuance of a direction to the respondent No.1 to quash the revised merit list dated 23.10.2018 and to issue a fresh merit wise list of candidates in respect of Private Secretary Examination -2016 in terms that the ranks awarded to candidates in terms of result declared on 30.01.2017 are not unsettled and also that the candidates who were later selected, be placed below the last selected candidate as per Notification No. 198/Estt/E-2/DHC dated 14.03.2018. In addition, the petitioner also sought enhancement of two marks for a question and prayed for resettlement of his seniority.

26. Amidst pendency of the aforesaid petition i.e. W.P.(C) 949/2019 and subsequent upon appointment of Ms.Sapna Sethi as Private Secretary by virtue of Notification dated 07.03.2019, the establishment of this Court notified the "Revised Merit List of Candidates Who Were Shortlisted For Interview In Private Secretary Examination -2016" on 17.12.2021, which is challenged by petitioner-Dinesh Kumar by filing W.P.(C) 10668/2022 inter alia praying for quashing thereof.

27. Similarly, the petitioners- Kunal Maggo and others have preferred writ petition being W.P.(C) 7893/2019 praying for quashing of Notification No. 108/Estt./E-2/DHC dated 15.01.2019 as well as Revised Merit List dated 23.10.2018 and have sought their appointments as per merit list dated 30.01.2017. These petitioners have also prayed for placing the ranks of newly selected candidates after the last selected candidate as per list dated 30.01.2017 and as per Note-2 of Notification No. 198/Estt./E-2/DHC dated 14.03.2018 issued by the establishment of this Court. These petitioners have also sought setting aside of communications dated 12.03.2019/28.03.2019 issued by respondent No.1 vide which their representations, seeking re-evaluation of their answer sheets, have been rejected.

28. Since the subject matter of these petitions pertains to Notice bearing No. 276/Estt/E-2/DHC dated 02.06.2016 vide which applications to fill the 27 vacant posts for the post of Private Secretaries were invited by this Court and also since the relief sought in these petitions pertains to merit list in respect of aforesaid examination, therefore, with the consent of learned counsel for the parties these petitions were heard together and are being disposed of by this common judgment.

29. Upon constitution of this Special Bench, when these petitions came up for hearing before us, upon preliminary hearing the learned counsel appearing from both the sides and in the light of the fact that the Private Secretaries who were appointed pursuant to Final Merit List on 30.01.2017; dated 14.03.2018 and dated 07.03.2019, had already joined and also the fact that the relief sought in the present petition is confined to constitution of merit list qua all the candidates, the arguments were advanced by learned counsel for the respective parties on this limited aspect.

30. During the course of hearing, Mr. Jayant K. Mehta, learned senior counsel appearing on behalf of petitioner-Dinesh Kumar submitted that the petitioner had made a representation to respondent No.1 on 25.05.2018 seeking enhancement of his marks obtained in the written examination and to settle his position in the Final Merit List, which was placed before the Special Committee in its meeting held on 23.07.2018 and 01.10.2018, who rejected it on account of being belated. Learned senior counsel submitted that at the first instance, the decision of respondent No.1 to unsettle the seniority of candidates appointed by virtue of order dated 30.01.2017 is arbitrary, unjust and unreasonable and over and above that, petitioner's right have been hit by denial of re-evaluation of his answer sheet by the Special Committee. The petitioner is aggrieved of unequal treatment meted out by respondent No.1 by enhancing marks of only those candidates who had filed representations and writ petitions. It was submitted that petitioner's case is distinct from the parameters laid down by this Court in Saphalta Bhati's case, as the petitioner herein is aggrieved of notification of Revised Merit List dated 23.10.2018 [challenged in W.P.(C) 949/2019] as well as Revised Merit List dated 17.12.2021 [challenged in W.P.(C) 10668/2022], whereby his position in the merit list has been twice unsettled.

31. Learned senior counsel has brought to the notice the fact that petitioner-Dinesh Kumar, who was recommended for appointment as Private Secretary vide 'Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017', was confirmed to the said post after successfully completing his probation by virtue of Office Order bearing No. 888/Estt./E- 2/DHC dated 17.09.2018 and so, after confirmation his appointment to the subject post, his merit cannot be touched. Learned senior counsel next submitted that petitioner has been grossly prejudiced by the re-evaluation and revision of the merit lists, which has been declared by respondent No.1 without hearing or putting to the notice of the petitioner, he being the necessary and proper party. Reliance was placed upon decision of Hon'ble Supreme Court in Centre for Public Interest Litigation Vs. Registrar General of Delhi High Court (2016) 13 SCC 163 wherein it was observed that selection of already selected candidates shall not be unsettled.

32. It was also submitted by learned senior counsel that none of the selected candidates as per original Merit Wise Result dated 30.01.2017 was arrayed as party to the petition being W.P.(C) No. 2863/2018 filed by Ms. Sapna Sethi and, therefore, unsettling his seniority as well as of other appointees is de hors the

settled principles of law.

33. Learned senior counsel next submitted that in the minutes of meeting dated 01.03.2018, it has been noted by the then The Acting Chief Justice that "the fact that the candidates had been already appointed as back as on 30.01.2017 appear to have not been brought to the notice of the Court which had directed restricted evaluation." Further, the Special Committee had also observed that "given the fact that the re-evaluation was done by a new examiner, different from the examiner who had evaluated the written tests of the earlier selected PSs, there is every likelihood, had the same examiner evaluated the answer sheets of the said earlier selected PSs, their marks would have also increased."

34. Learned senior counsel submitted that the then Hon'ble The Acting Chief Justice had vide order dated 07.03.2018 had observed and held that the newly appointed 08 PSs who had earlier not been placed in the select list, cannot be allowed to steal the march over the candidates who have already been working as PS since over a year merely because consequent to re-evaluation by a different examiner, their marks had increased.

35. Lastly, it was submitted that the Revised Merit Wise Seniority Lists dated 23.10.2018 as well as 17.12.2021 deserve to be quashed and seniority of petitioner be fixed in terms of the original 'Final Merit List of the Private Secretary Examination -2016' .

36. Similarly, Mr. Arvind Nigam, learned senior counsel, appearing on behalf of petitioner- Kunal Maggoo and others, reagitated the submissions advanced on behalf of petitioner-Dinesh Kumar. The stand of these petitioners is that respondent No.1 ought not to have unsettled the ranks awarded to the petitioners vide merit list dated 30.01.2017 on the basis of limited re-evaluation. It is urged that by issuing revised merit lists dated 23.10.2018 as well as 17.12.2021, the respondent No.1 has acted in utter violation of its own Notification dated 14.03.2018, especially when these petitioners have successfully completed their probation period. Reliance is placed upon various observations in order dated 01.10.2018 by the then Hon'ble the Acting Chief Justice to submit that it is settled position that the merit of 27 already appointed cannot be touched in view of limited re-evaluation by a new examiner and in this background, by Notification dated 14.03.2018, six candidates were appointed with condition mentioned as Note.2 that they would be placed at the bottom of the select list (i.e. after the last successful candidate), without disturbing the merit of earlier appointed Private Secretaries. With regard to merit position of Ms.Sapna Sethi, these petitioners have averred that her name was not recommended for appointment by the Special Committee vide order dated 01.03.2018 having secured 129 marks, which is less than 130 secured by the last appointed Private Secretary and that her answer sheets have been twice re-evaluated by the original examiner, then by independent examiner and also yet another re-evaluation was permitted, whereas the petitioners have not been given one such opportunity. According to the petitioners, subsequent upon

appointment of 27 petitioners in terms of "Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017" , Ms. Sapna Sethi along with other writ petitioners, has been appointed against 22 newly created vacancies falling in the coming years and, therefore, she cannot be permitted to be awarded any place in the original merit list dated 30.01.2017.

37. On the other hand, Mr.Rajshekhar Rao, learned senior counsel, appearing on behalf of respondent No.1-High Court of Delhi through Registrar General, submitted that the Revised Merit Lists dated 23.10.2018 as well as 17.12.2021 have been issued after thorough examination of the facts by the competent authority. It was empathically submitted by learned senior counsel that the process of revaluation of the answer sheets of the representationists and writ petitioners was carried out in compliance of decision of Special Committee dated 10.07.2017, vide which appointment of an Independent Examiner to re-evaluation of answer sheets was restricted to only 13 candidates, as the others since had not filed any representation, were deemed to have accepted the marks awarded to them. Further submitted that the aspect of belated request for re-evaluation of answer sheets was also considered and settled by this Court in Saphalta Bhati's case and since petitioner- Dinesh Kumar's representation, along with 08 other representationists, seeking enhancement of the marks was rejected by the Special Committee vide order dated 15.09.2017, the present petition has been filed seeking quashing of the Revised Merit Lists and thereby, he cannot be permitted to blow hot and cold in the same breath. Learned senior counsel informed that subsequently, 19 representations made by originally appointed Private Secretaries seeking re-evaluation of their answer sheets, were rejected by the Special Committee in its meeting dated 21.02.2019 in view of decision dated 17.05.2022 in W.P.(C) 4260/2017, titled as Durgesh Nandan Vs. High Court of Delhi and order dated 15.09.2017 in W.P.(C) 8255/2017, titled as Saphalta Bhati Vs High Court of Delhi, which stood approved by Hon'ble The Chief Justice on the administrative side.

38. Further, the stand of respondent No.1 is that vide Office Order dated 17.09.2018, the petitioner- Dinesh Kumar as well as other writ petitioners before this Court, were informed about successful completion of their probation period, however, it also notes that they would be confirmed on the post of Private Secretary on their turn. It was submitted that there is no mala fide or arbitrariness in issuing revised merit lists dated 23.10.2018 or 17.12.2021, as the same have been issued under the orders of Hon'ble the Chief Justice on the recommendations of the Special Committee. Therefore, the action of respondent No.1 cannot be called arbitrary, unjust and against principles of natural justice.

39. In the counter affidavit [W.P.(C) 949/2022] filed on behalf of respondent No.2-Ms.Krishna Bhoj, it is stated that the petition preferred by the petitioner is highly belated and in view of decision of this Court in Saphalta Bhati's case, this petition deserves to be dismissed. This respondent has averred despite having obtained copy of answer sheet on 13.02.2017, the petitioner filed his

representation belatedly on 25.05.2018 and therefore, the Special Committee has rightly rejected his representation considering that he is one amongst those who had accepted the marks awarded to them but had not filed representation/writ petition at the relevant time. Respondent No.2 has also stated that the Revised Merit List dated 23.10.2018 is notified pursuant to decision of the Special Committee as well as Hon'ble the Chief Justice and thus, cannot be challenged.

40. To the contrary, respondents No.6-Sunil, respondent No.9- Shitu Nagpal, respondent No. 11- Sreeram L., respondent No.12- Sumit Ghai and respondent No.13- Durgesh Nandan [in W.P.(C) 949/2019] in their counter affidavits have submitted that they along with other already appointed Private Secretaries, namely, Ms. Krishna Bhoj, Mr.Dinesh Singh Nayal, Mr.Rajinder Singh Karki, Mr. Kaushal Kumar Sachdeva and Mr.Kamlesh Kumar, were prompt and diligent in filing their representations for re-evaluation of their answer sheets, whereas petitioner- Dinesh Kumar has sought re-evaluation of his answer sheets belatedly and in view of decision of this Court in Saphalta Bhati's case, his representation has rightly been rejected.

41. These respondents have also averred that against the decision of Special Committee vide meeting dated 07.03.2018 and the notification dated 14.03.2018, they had filed representations inter alia on the ground that these candidates had scored higher marks in re-evaluation process and they were deprived of their rights by not placing them according to their merit and had prayed for drawing of revised merit list. Their representations were considered by the Special Committee in view of decision of notification dated 14.03.2018; decision of this Court in Saphalta Bhati's case and other decisions taken by the Special Committee and only thereafter, the revised merit lists were drawn. Thus, dismissal of these petitions is sought by these respondents.

42. Upon hearing learned counsel representing both the sides and on perusal of material placed before us, we find that the question for determination by us is as to whether the merit position of 27 candidates, who were originally appointed on the post of Private Secretary by virtue of 'Final Merit List of the Private Secretary Examination-2016' dated 30.01.2017 can be disturbed subsequent upon appointment of seven candidates who have been appointed vide order dated 14.03.2018 and dated 07.03.2019 and also as to whether inter se seniority of already appointed 27 candidates can be unsettled in the light of the fact that re-evaluation of answer sheets was permitted and restricted to only 13 candidates and thereby, declaring the Revised Merit List dated 17.12.2021 as final and binding upon the parties.

43. It has already been noted above that respondent No.1 vide Notice No.276/Estt/E-2/DHC dated 02.06.2016 had invited applications against 75% test quota to fill up 27 vacant posts on the post of Private Secretaries and after conducting written examination and skill tests on 04.07.2016 and 05.07.2016 respectively, the result thereof was declared on 22.12.2016. The successful candidates were

called for viva / interview on 19.01.2017 and 25.01.2017 respectively and final result was uploaded on the intranet of this Court on 30.01.2017 vide "Final Merit List of the Private Secretary Examination-2016" dated 30.01.2017.

44. It is not disputed that during the selection process and prior to declaration of the final result on 30.01.2017, a few candidates, namely, Ms.Sangeeta Anand, Ms.Garima Madan and Mr.Amit Arora filed representations dated 23/24.12.2016 for rechecking of their answer sheets, which were rejected vide order dated 18.01.2017 by the competent authority vide order dated 18.01.2017. Thereafter, Ms. Garima Madan preferred another representation dated 27.01.2017 prior to declaration of the result seeking enhancement of her marks and for stay upon declaration of final result. Two other candidates, namely, Ms.Sapna Sethi and Mr.Sumit Ghai, consequent upon declaration of results on 30.01.2017, vide their representations dated 07.02.2017 and 15.02.2017, also sought re-evaluation of their answer sheets. Their representations were considered by the Selection Committee for Appointment of Officers of High Court and District Courts, whereby 04 marks each of Ms. Garima Madan and Ms. Sapna Sethi, were increased.

45. A few other candidates, who could not make through the select list dated 30.01.2017, filed representations and writ petitions seeking re-evaluation/ re-check of certain answers. Pursuant to decision dated 17.05.2017 passed in the said writ petitions, the then Hon'ble Acting Chief Justice constituted a Special Committee on 23.05.2017 for evaluation of the certain questions, who vide order dated 10.07.2017 directed appointment of an independent examiner for re-evaluation of answer book of those representationists/ writ petitioners, restricting it to 13 candidates already before it, implying that those who till then had not made any representation, are deemed to have accepted the marks awarded to them. It is pertinent to mention here that all the other representations and writ petitions preferred thereafter for re-evaluation were rejected on the ground of delay and laches and the re-evaluation was restricted only to the aforesaid 13 candidates. Relevantly, out of those 13 candidates, 08 were private respondents (non-selectees) and other 05 were already appointed Private Secretaries, who had sought enhancement of marks and fixation of seniority in terms of their merit. Accordingly, answer sheets of 13 candidates were re-evaluated and the outcome of re-evaluation was reported in the manner already noted in Para-17 above. Thereafter, vide order dated 01.03.2018, the then Hon'ble the Acting Chief Justice observed as under:-

"An unfortunate situation has resulted because of the partial re-evaluation.

XXXX

XXXX

The Registry has report that even as on date there are 22 vacancies in the post of Private Secretary under 75% test quota in our court. Therefore, there is no difficulty with regard to appointment of those who stand qualified upon the

limited re-evaluation without effecting the appointments made earlier. The issue which requires consideration is the issue of how the seniority of these persons is to be fixed and whether any re-fixation is necessary.”

46. Thereafter, vide Notification No.92/Estt-I/E-2/DHC dated 14.03.2018, the then Acting Chief Justice recommended appointment of six candidates, namely, Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai and Mr. Durgesh Nandan, on the post of Private Secretary on the establishment of this Court w.e.f. 12.03.2018 till further orders against vacant post of Private Secretary under 75% test quota with the condition that the appointment of above mentioned officers will be on probation initially for a period of one year from the date of their appointment and expiry of the period of limitation shall not result in their automatic confirmation and also that all the above mentioned officers would be placed at the bottom of the select list (after the last successful candidate, namely, Mr.Jitender Kumar) as per their inter se merit, without disturbing the Private Secretaries who were earlier selected and who have been working as Private Secretary thereafter.

47. Relevantly, with the appointment of 27 candidates by virtue of Merit Wise Result dated 30.01.2017, the process for appointment under Notice No. 276/Estt/E-2/DHC dated 02.06.2016, had attained finality. However, the then Acting Chief Justice, in order to settle the unfortunate situation having arisen due to limited re-evaluation in the said examination, while placing reliance upon Hon’ble Supreme Court’s decision in Centre for Public Interest Litigation (Supra), vide order dated 01.03.2018 recommended appointment of 06 candidates from the available 22 vacancies pertaining to the year with the condition that they shall be placed at the bottom of the select list i.e. after the last successful candidate, namely, Mr.Jitender Kumar. That is to say, these 06 candidates, namely, Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai and Mr. Durgesh Nandan, who were appointed vide Notification dated 14.03.2018 and Ms. Sapna Sethi, who was also appointed by virtue of order/ Notification dated 07.03.2019, were appointed as Private Secretaries against the 22 vacancies of the year 2018, which were never notified or published by respondent No.1.

48. It would also be worthwhile to mention here that every organization is bound to make appointments strictly under the rules prescribed for recruitment. It is a matter of fact and record that in the present case, the prayers for re-evaluation and stay of result of Private Secretary by the first few representationists was not considered and rather rejected by the competent authority of respondent No.1 observing that “there was no provision for rechecking of answer sheets in the Delhi High Court (Appointment and Conditions of Service) Rules, 1972”. However, a few unsuccessful candidates, after obtaining copies of their answer sheets under the RTI Act, preferred writ petitions seeking re-evaluation in respect of certain questions and the Court referred the matter to the then The Acting Chief Justice for appropriate action thereupon. Accordingly, a Special Committee was constituted and an independent examiner was appointed to carry out the re-

evaluation.

49. The question is as to whether re-evaluation of the answer sheets was rightly directed even if it is impracticable under relevant Rules. On the aspect of re-evaluation, the Hon'ble Supreme Court in *High Court of Tripura Vs. Tirtha Sarathi Mukherjee* (2019) 16 SCC 663 has observed as under:-

"14. The next question to be considered is regarding the merits of the order. In *Pramod Kumar Srivastava* case, a Bench of three learned Judges after, in fact, advertent to the judgment of a Bench of two learned Judges in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth* proceeded to lay down as follows:

"7. ... There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer books. Naturally, the court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

15. In *H.P. Public Service Commission v. Mukesh Thakur*, a Bench of two learned Judges held as follows:

"20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

(emphasis supplied)

It was further held more importantly as follows:

"24. The issue of re-valuation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, wherein this Court rejected the contention that in the absence of the provision for re-valuation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/ verification/re-valuation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision."

16. After referring to the Pramod Kumar Srivastava decision, it was laid down as follows:

"26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the court should not generally direct re-valuation."

17. In CBSE v. Khushboo Shrivastava, again a Bench of two learned Judges after undertaking a review of earlier decisions, held as follows:

"9. We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission [Pramod Kumar Srivastava v. Bihar Public Service Commission, has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth that in the absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Bihar Public Service Commission was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda , in which the direction of the High Court for re-evaluation of answer books of all the examinees securing 90% or above marks was held to be unsustainable in law because the Regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answer books in the rules."

18. It is, finally, in Ran Vijay Singh v. State of U.P. that the Court proceeded to cull out the conclusions which include para 30.2. We may also notice the conclusion in para 30.5 which reads as follows:

"30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

19. We have noticed the decisions of this Court. Undoubtedly, a three-Judge Bench has laid down that there is no legal right to claim or ask for re-valuation in the absence of any provision for re-valuation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the

exercise of the jurisdiction under Article 226 of the Constitution to direct re-valuation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of re-valuation.

20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

50. In the afore-noted extracted paras, the Supreme Court has taken note of various decisions on the aspect of re-evaluation and reiterated that in the absence of provisions of re-evaluation under the Rules, it cannot be claimed as a matter of right. However, in exceptional circumstances the authority may direct for re-evaluation. With regard to the controversy in hand, though there is no provision for re-evaluation of answer sheets under the Delhi High Court (Appointment and Conditions of Service) Rules, 1972, however, in the peculiar facts of the case, re-evaluation was directed by the Selection Committee. A few non-selectees, after obtaining copies of answer sheets, challenged certain questions and answers and the model answer key. There is no doubt that the controversy of merit and rank position inter se these Private Secretaries has emerged due to restricted re-evaluation, root cause whereof is inaccurate answer key/ model answers and erroneous evaluation of answer sheets.

51. The Hon'ble Supreme Court in *Manish Ujwal & Others Versus Maharishi Dayanand Saraswati University & Others*, (2005) 13 SCC 744, wherein the students had challenged the answer key of entrance test for admission in

University before the High Court, held as under:-

"8. xxxxxxxxxxxx. It is possible that the fresh evaluation by feeding correct key answers to the six questions may have adverse impact also on those who may have already secured admission on the basis of the results declared and ranking given by feeding incorrect keys in relation to these questions. Though we are of the view that the appellants in particular and the student community in general, whether one has approached the court or not, should not suffer on account of demonstrably incorrect key answers but, at the same time, if the admissions already granted as a result of first counselling are disturbed, it is possible that the very commencement of the course may be delayed and the admission process for the courses may go beyond 30-09-2005, which is the cut-off date, according to the time schedule in the Regulations and as per the Law laid down by this Court in *Mridul Dhar (Minor) v. Union of India*. In this view, we make it clear that fresh evaluation of the papers by feeding correct key answers would not affect the students who have secured admissions as a result of the first counselling on the basis of ranking given with reference to the results already declared."

52. In the present case, though the re-evaluation was restricted to only 13 candidates, however, the Special Committee was also aware of the unfortunate situation and so, in its meeting held on 01.03.2018, the committee decided to not touch the merit of 27 already appointed candidates. The candidates, who were appointed pursuant to re-evaluation, were directed to be placed at the bottom of the seniority list already notified on 30.01.2017 i.e. after the last successful candidate, namely, Mr.Jitender Kumar. That is to say, these six (06) candidates, namely, Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai and Mr. Durgesh Nandan, vide Notification dated 14.03.2018 and Ms. Sapna Sethi, vide Notification dated 07.03.2019 were appointed on the post of Private Secretary against the 22 vacancies falling in the preceding years, which were never notified or published by respondent No.1. It is a settled legal position that filling up of vacancies over and above notified, is not permissible.

53. The Hon'ble Supreme Court in *Rakhi Ray v. High Court of Delhi* (2010) 2 SCC 637 dealt with a case where the High Court had advertised 20 vacancies of District Judges, of which 13 were in the general category and all were filled. The candidates who were below in ranking sought appointment from the vacancies which arose during the selection process and the Supreme Court held as under:-

"7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and

exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale”, otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law. (Vide Union of India v. Ishwar Singh Khatri [1992 Supp (3) SCC 84 : 1992 SCC (L&S) 999 : (1992) 21 ATC 851] , Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat [1994 Supp (2) SCC 591 : 1994 SCC (L&S) 1159 : (1994) 28 ATC 78] , State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986 [(1994) 1 SCC 126 : 1994 SCC (L&S) 274 : (1994) 26 ATC 500 : AIR 1994 SC 736] , Prem Singh v. Haryana SEB [(1996) 4 SCC 319 : 1996 SCC (L&S) 934] and Ashok Kumar v. Banking Service Recruitment Board [(1996) 1 SCC 283 : 1996 SCC (L&S) 298 : (1996) 32 ATC 235 : AIR 1996 SC 976] .)”

(emphasis supplied)

The Supreme Court further held that:-

“12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement.”

54. Further, the Supreme Court in Pankjeshwar Sharma & Others Vs. State of Jammu & Kashmir and Others (2021) 2 SCC 188, dealt with a case wherein appointments to the post of Sub-Inspector of Police, was challenged by unsuccessful candidates and consequently, after multiple rounds of litigation, the Supreme Court held that the appointment of 22 candidates, whose appointment was challenged, was an exceptional case, where the appointment was made on a concession granted by the State for giving a quietus to the long drawn litigation and held as under:

“30. It is true that ordinarily in the open selection, appointments are to be made strictly in the order of merit in terms of the procedure prescribed under the relevant statutory recruitment rules or in absence under the guidelines if prescribed, still if appointments are made for exceptional reasons deviating from the merit list which ordinarily is not permissible but in unforeseen exigencies, if the State with a bona fide intention to give quietus to the ongoing litigation pending for the last eight years extended its concession to adjust such 22 candidates who are under litigation for long time with no mala fides or bias being imputed to the State action could have been possible only if those who are litigating and agitating their grievance reached up to this Court cannot be held to be faulted.”

55. It is a matter of fact and record that during the entire process of selection,

appointment, re-evaluation, representation and writ petitions, none of the candidate, whether successful or unsuccessful, had challenged the selection and appointment and the only relief sought is that they should be placed in the list according to their merit. Perhaps all the candidates feared losing of their appointments. It is not misplaced to assume here that they were aware that once the selection and appointment process is over, they being unsuccessful have no right to challenge it. However, as already noted above, in the present case an unfortunate situation had arisen and therefore, the Special Committee, to give quietus to the issue in hand, appointed the 07 unsuccessful candidates against the then 22 available vacancies under 75% test quota, but refrained to unsettle the merit of already appointed 27 candidates.

56. Vide Order bearing No.888/Estt.E-2/DGC, dated 17.09.2018, out of 27 officers, 26 were declared to have successfully completed their probation on the post of Private Secretary pursuant to their appointments on 30.01.2017. Thereafter, the Special Committee in its meeting held on 01.10.2018 recommended to accord notional seniority to those candidates whose marks were enhanced as a result of re-evaluation, in accordance with the revised marks.

57. On this point, we reiterate that the Special Committee in its order dated 01.3.2018 had relied upon the ratio of law laid down by the Supreme Court in Public Interest Litigation v. Registrar General of High Court of Delhi and decision dated 11th December, 2017 in Civil Appeal No. 367/2017, Ran Vijay Singh & Ors. V. State of Uttar Pradesh & Ors. to the effect that the selection of the already selected candidates shall not be unsettled and if upon re-evaluation any other candidate is selected, they would not ranked senior to the candidate already selected. Thereby, the Special Committee held as under:-

" (i) The 5 already selected candidates whose papers were reevaluated, would not still be entitled to be granted benefit of seniority vis-a-vis the other PSs who did not seek such re-evaluation because both the groups cannot be stated to be equally placed; the first group having availed the benefit of re-evaluation by a different examiner whereas the other group did not avail such benefit of re-evaluation by the said examiner.

(ii) The newly selected candidates, who were not selected as PS when the papers were originally examined, and became eligible to such selection only consequent on the re-evaluation of their papers by a different examiner, would be placed at the bottom of the select list (after the last successful candidate, namely, Mr. Jitender Kumar) as per their inter se merit, without disturbing the PSs who were earlier selected and who have been working as PS thereafter."

58. The stand of petitioner- Dinesh Kumar as well as Kunal Maggoo and others is that even though representations seeking re-evaluation of marks by these petitioners were dismissed due to delay and laches, it cannot be presumed that these candidates had since belatedly filed representations, were not prompt and had thereby accepted the marks awarded to them. Rather, with their selection

and appointment pursuant to order dated 30.01.2017, the recruitment process was over and it is only when the 07 belatedly selectee candidates filed representations seeking their notional seniority and consequentially, respondent No.1 uploaded the revised merit list dated 23.10.2018 on the intranet of this Court, accordingly these petitioners have challenged the revised seniority list.

59. We find force in the aforesaid plea of the petitioners. In our considered view, since the Special Committee had restricted the re-evaluation to 13 candidates, the writ petitions and representations preferred by other selectees and non-selectees were rejected due to delay and laches.

60. On the aspect of delay in seeking the relief, the Supreme Court in *State of U.P. v. Arvind Kumar Srivastava* (2015) 1 SCC 347 has observed as under:-

"22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

61. The proposition of law laid down by Supreme Court in State of U.P. (Supra) makes it clear that though the normal rule is that when particular set of employees are given relief, similar relief should be extended to similarly situated persons and merely because such persons belatedly approached the court or did not approach at all, they shall not be treated differently. However, if the subject matter is such which requires consideration of facts at large, then such persons will have to satisfy the delay. In the present case, it was perhaps expected from the candidates, whether selectees or non-selectees, to be aware and prompt in seeking re-evaluation, but again we cannot lose sight of the fact that under the relevant Rules, the re-evaluation of answer sheets was impermissible.

62. Now the question arises, when the Special Committee at the first instance by virtue of its order dated 01.03.2018, as already observed above, in view of the fact that only restricted candidates were permitted to get the benefit of re-evaluation, had decided to not touch the inter se seniority of 27 candidates and directed to place seniority of newly appointed 07 candidates at the bottom of the seniority list, was issuance of two revised merit lists by respondent No.1 justified?

63. On this aspect, the stand of respondent No.1 has been that the unsuccessful 07 candidates, whose marks were enhanced in re-evaluation, pursuant to their appointments, had sought their notional seniority. Also, 05 already appointed candidates, whose marks were also enhanced in re-evaluation, had sought seniority on merit basis. Thus, the Special Committee vide order dated 01.10.2018, distinguished the two decisions of Supreme Court in Public Interest Litigation (Supra) and Ran Viiav Siiiah & Ors, which were relied upon by the previous Special Committee in order dated 01.03.2018. Rather, the Special Committee relied upon decision of Supreme Court in Union of India and Others v. G.D. Goel ILR (2008) Suppl. (1) Delhi 44; decision of this Court in W.P.(C) No. 3892/2014 titled Raiesh Kumar Vs. High Court of Delhi and another decision of this Court in the case of Mr.Sudhir Sachdeva, AOJ passed by the Administrative Committee of this Court and held as under:-

"1. The candidates who have been appointed as Private Secretary pursuant of the decision dated 12.03.2018 may be appointed as Private Secretary with effect from the date when other successful candidates were appointed, i.e., with effect from 30.01.2017 on notional basis. As regards Mr. Amit Arora who was promoted under 25% seniority quota on 01.08.2017, i.e., after 30.01.2017 but before declaration of re-evaluated result, on 12.03.2018, he may also be appointed as Private Secretary with effect from the, date when other successful candidates were appointed, i.e., with effect from 30.01.2017, on notional basis. All of them shall be entitled to notional seniority. However, the question regarding grant of consequential benefits is left open and will be decided in the next meeting.

2. Revised merit list which has been drawn up after taking into account the revised marks as per Re-evaluation Reports submitted by the. Independent Examiner and by the Committee in case of Mr. Amit Arora, is approved (Annexure 'A'). The same may be uploaded on the website of this Court."

64. We have gone through the decision of this Court in *Union of India and Others v. G.D. Goel* (Supra). In the said case, this Court had dealt with the plea that once the employees are given promotion from a back date which was legitimately due, the notional promotion would be no consolation and arrears of pay cannot be denied, whereas the other side had pleaded that even though the employees are given promotion from back date, yet they having not worked on the promotional post, cannot claim arrears of pay. The Special Committee in its order dated 01.10.2018 has relied upon the following observations in the case above:-

“The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see *State of Kerala and Others v. E.K. Bhaskaran Pillai* - JT 2007 (6) SC 83; *Mohd. Ahmed v. Nizam Sugar Factory and Others* (2004) 11 SCC 210; *Nalini Kant Sinha v. State of Bihar and Others* - 1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.”

65. We have also gone through decision of this Court in the case of *Rajesh Kumar Vs. High Court of Delhi* (Supra). In the said case, the petitioner, who denied promotion in a departmental examination and after obtaining copy of his answer sheet under the RTI, he had challenged the wrong evaluation of his answers and the Court had granted him relief of appointment and consequential seniority. Similarly, with regard to the case of *Sudhir Sachdeva*, the Special Committee has itself noted that one of his questions was not checked, for which he was granted marks and consequently, he was granted promotion and seniority.

66. In our considered opinion, in the case of *Rajesh Kumar* and *Sudhir Sachdeva*, they were not awarded marks for particular questions and so were granted appointments to promotional posts and seniority. However, in the present case, it is the answer model key which has come under clouds and also re-evaluation of answer sheets of restricted candidates has been permitted and so, the facts are distinguishable. Moreover, even though certain questions in model answer key were wrong, but the re-evaluation of all the candidates had been done based upon the same answer key only. A few unsuccessful candidates who could not make their place in the selection process, challenged certain questions to their

benefit, which they ultimately received and got appointed. We cannot ignore the fact that had answer scripts of all the candidates been re-examined for those particular questions, the merit list would have again shuffled. The special committee was also conscious of this fact when it noted that it would be unfair to allow the 08 newly appointed Private Secretaries to steal a march over the already appointed Private Secretaries merely because consequent to their re-evaluation by a different examiner, their marks had increased.

67. Also, in *Union of India and Others v. G.D. Goel (Supra)*, the issue was for determination regard to payment of arrears, due and payable from back date of promotion and so, in the facts of the said case this Court had observed upon the legitimate right of candidates to have benefits from the date of notional seniority. Again, we find that the facts are distinct from the present case.

68. In the light of aforesaid observations, we find that as far fixation of notional seniority of 08 candidates is concerned, these candidates had appeared in the examination pertaining to the year 2016, whose merit list was declared on 30.01.2017 and pursuant to re-evaluation, vide Notification dated 12.03.2018 they have been appointed Private Secretaries. We find that the decision dated 01.10.2018 passed by the Special Committee granting notional appointment to them from 30.01.2017 is just and proper.

69. So far as grant of seniority to these 08 candidates (earlier non-selectee) as well as other 05 already appointed candidates in terms of revised merit lists dated 23.10.2018 and 17.12.2021 is concerned, we find that the settled legal position is that once seniority of appointees has been fixed and it is in force, it should not be disturbed. It has been already held in a catena of decisions that seniority list in any government department is an incident of service which of critical importance to the individual and the department. A seniority list depicts the current status and future prospects of an official and therefore, cannot be unsettled without putting it in the knowledge of the affected parties.

70. It is matter of record and fact that prior to issuance of revised seniority lists, no provisional list was drawn and notified and no notice was given to the affected parties /selectees. The fact remains, prior to notification of the revised merit lists, a provisional revised merit list, inviting objections, if any, should have been notified.

71. Hence, we find that six (06) candidates, namely, Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai and Mr.Durgesh Nandan, have rightly been given notional appointment from 30.01.2017 but they shall be placed in merit list in terms of Note- 2 of order dated 14.03.2018 i.e. after the last successful candidate, namely, Jitender Kumar, without disturbing the merit of already selected Private Secretaries vide final result dated 31.01.2017.

72. So far as merit position of Ms.Sapna Sethi, who has been appointed Private Secretary vide Notification dated 07.03.2019 is concerned, it is not disputed that she had applied for re-evaluation of her answer sheets with promptitude and she

is one of those 13 candidates whose answer sheets were permitted to be re-evaluated and also she had to pursued two rounds of litigation and representations and thereafter, her marks were enhanced twice, however, her candidature is on similar footing with those who stood appointed against 22 vacancies pertaining to the year 2018 under 75% test quota. As we have already observed above that with the appointment of 27 Private Secretaries, the process for appointment under Notice No. 276/Estt/E-2/DHC dated 02.06.2016 attained finality, therefore, she has to be placed according to her merit position amongst those who have been appointed against 22 vacancies pertaining to the year 2018, without disturbing the merit of already selected Private Secretaries vide final result dated 31.01.2017.

73. With regard to inter se seniority of 27 originally appointed Private Secretaries, we find that Ms. Krishna Bhoj, Mr. Dinesh Singh Nayal, Mr. Rajender Singh Karki, Mr. Kaushal Kumar Sachdeva and Mr. Kamlesh Kumar, who were appointed as Private Secretaries initially on 30.01.2017, were prompt and diligent in filing their representations seeking re-evaluation and they are amongst those 13 candidates who were permitted to seek re-evaluation by the Special Committee and were granted enhanced marks, whereas petitioner- Mr. Dinesh Kumar [in W.P.(C) No. 949/2019 and W.P.(C) No. 10668/2022] and Mr. Kunal Maggo and other petitioners [in W.P.(C) 7893/2019], despite being aware of their colleagues, including originally appointed selected candidates, having obtained copies of their answer sheets under the RTI Act in the year 2017 itself, did not raise any grievance or make any representation or file any writ petition with regard to re-evaluation of their answer sheets on or before constitution of Special Committee and thereafter till, November, 2018. However, as we have already observed above that when these petitioners, pursuant to notification of the revised merit lists, found that their rights have been jeopardized with the selection and appointment of 08 candidates and consequentially, their seniority has been disturbed, they filed the representations and the petitions. We have also observed above that merit list once final and in force, cannot be resettled and thereby, the restricted appointed candidates who got the benefit of re-checking and enhancement of marks, cannot also be permitted to seek change in their merit position in view of the fact that other appointed Private Secretaries have not been able to take advantage of re-evaluation. Hence, the claim of re-settlement of seniority of Ms. Krishna Bhoj, Mr. Dinesh Singh Nayal, Mr. Rajender Singh Karki, Mr. Kaushal Kumar Sachdeva and Mr. Kamlesh Kumar, is rejected.

74. As already noted above, the Supreme Court in State of U.P.(Supra) has made it clear that in service matters similarly situated persons should be treated similarly, whereas in the present case, besides 05 selectees and 07 non-selectees, other candidates did not get the benefit of re-evaluation at all. This Court while sitting in writ jurisdiction cannot permit to continue happen further irregularities if at all it has happened once. We are also conscious that there is no fault of any of the candidate, whether earlier or later selected and appointed and the various rounds of representations and litigation is outcome of inexorable re-

evaluation of answer sheets. We are informed that all the candidates appointed as Private Secretaries pursuant to the examination of the year 2016, have gained good experience and they are working efficiently to the satisfaction of Judges of this Court. In the interest of justice and in the peculiar facts of this case, and also the fact that none of the candidate had ever sought quashing of the appointment process, we have refrained ourselves to take coercive measures. However, the selection process pertaining to the year 2016 cannot be permitted to go on and on, affecting the harmony of colleagues due to conflicts of seniority.

75. In view of the above, the revised merit lists dated 23.10.2018 and 17.12.2021 are set aside. We direct that the seniority of candidates mentioned in 'Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017' shall remain in force. We also direct that Mr.Sunil, Ms.Shitu Nagpal, Mr. Vipin Kumar Rai, Mr. Sreeram L, Mr.Sumit Ghai, Mr. Durgesh Nandan and Ms. Sapna Sethi shall be considered as appointed from 30.01.2017, however, their seniority position shall be reckoned after the last appointed candidate i.e. Mr. Jitender Kumar in the Final Merit List of the Private Secretary Examination-2016 dated 30.01.2017, in terms of their merit. Respondent No.1 is directed to draw and notify the fresh seniority list within four weeks, in terms as directed above.

76. With aforesaid directions, these petitions and pending applications are accordingly disposed of.