

(2025) 08 SC CK 0194

In the Supreme Court Of India

Case No : REF. U/A 317(1) NO. 1 Of 2023

**In Re: Mepung Tadar Bage, Member, Arunachal Pradesh Public Service
Commission @APPELLANT @Hash**

Date of Decision : 28-08-2025

Acts Referred:

Constitution of India, 1950 — Article 124, 124(4), 145, 145(1)(j), 315, 316, 316(2), 316(1), 317, 317(1), 317(1), 317(3), 317(3), 318, 319, 319(d), 320Indian Penal Code, 1860 — Section 120B, 406, 407, 409, 420Prevention of Corruption Act, 1988 — Section 7, 8, 13(2)

Citation : (2025) 08 SC CK 0194

Hon'ble Judges : J.K. Maheshwari, J;Aravind Kumar, J

Bench : Division Bench

Advocate : R Venkatramani, Yashraj Singh Bundela, Raman Yadav, Abhishek Kumar Pandey, Chitvan Cinghal, Kartikay Aggarwal, Shreekanth Neelappa Terdal, Manish Goshwami, Rameshwar Prasad Goyal, Arvind Kumar Sharma, Nidhesh Gupta, Rituraj Biswas, Mayan Prasad, Anshula Grover, Chandan Kumar, Japneet Kaur, Vriti Gujarat, Bikram Dwivedi, Manu Abhishek Bhardwaj, Sujana Bardhan, Ananyo Roy

Judgement

J.K. Maheshwari, J

CONSPECTUS

1. It is a fact well-known that Civil Servants are indispensable to the governance of the country. The responsibility of efficiently and diligently implementing the laws has been bestowed upon them. Well thought of and planned policies can crumble, like a sandcastle, at the first hit of waves, if there isn't a strong administration in place to implement them. In a lot of ways, the Civil Servants are the ambassadors of democracy; the first point of contact between the citizenry and the government. It is through them that the government is able to successfully implement their countless welfare schemes for the larger good of the public. It wouldn't be out of place to note that the robust functioning of democracy lies steadfast on their shoulders.

2. While the Framers of the Constitution recognized the prominence of the Civil

Services in India, they were also keenly aware that these officers could be susceptible to the political powers of the day. Paramount pressure and burgeoning expectations of the citizens are some of the regular challenges that these civil servants are plagued with. It was to safeguard these officers from harsh rigours that come with a demanding job that the Constitution Framers envisaged the setting up of autonomous and independent bodies like the Public Service Commission at the Centre and in the States. Led by eminent members nominated by the government, these bodies govern the recruitment of civil servants and play a significant advisory role in their appointments, promotions, and disciplinary actions. To ensure these bodies remain completely impartial and free from any influence or outside pressure, Article 317 of the Constitution prescribes a stringent procedure for the removal of their members.

3. This is a reference made by the Hon'ble President of India under Article 317(1) of the Constitution of India, pertaining to the unfortunate tale of one such member who came to be nominated to a State Public Service Commission and was caught in the crosshairs of allegations and accusations of misbehaviour, for inquiry and report as to whether the Respondent - Ms. Mepung Tadar Bage, (hereinafter referred to as "Respondent"), Member of Arunachal Pradesh Public Service Commission (hereinafter referred to as "APPSC") ought to be removed as a member of APPSC on the grounds of misbehaviour.

4. The tipping point of the matter is the leakage of the question paper of Assistant Engineer (Civil) Mains Examination conducted by the Arunachal Pradesh Public Service Commission, on 26th and 27th August, 2022, leading to the reference for the removal of Ms. Bage, who was a member of the APPSC at the relevant time. Broadly, the facts giving rise to the present reference have been laid forth as under.

FACTS

5. The Respondent was appointed as a member of APPSC on 12.08.2021 under Article 316(1) of the Constitution of India, and assumed charge on 13.08.2021. As per Article 316(2) of the Constitution of India, a member of the APPSC shall hold office for a term of six years from the date on which he/she enters office or until attaining the age of 62 years, whichever is earlier. The APPSC consisted of five Members including the Chairman. On 18.08.2021, the Chairman of APPSC delineated the duties of the Respondent.

6. In the calendar year 2022, on 26.08.2022 and 27.08.2022, the APPSC conducted the Mains Examination for the post of Assistant Engineer (Civil) (hereinafter referred to as "Mains Examination"). On 28.08.2022, one of the candidates for the said examination, namely Mr. Gyamar Padang, submitted a formal complaint to the Officer-in-Charge of Police Station, Itanagar, alleging that some questions of the paper for the said examination were leaked in advance by APPSC in conspiracy with certain coaching institutes, which were accessible to some candidates including him beforehand, and therefore requested to lodge an

FIR. On 29.08.2022, he further informed the Secretary, APPSC regarding such leakage, and requested for stay on declaration of the results until a thorough and fair enquiry has been conducted.

7. Subsequently, in light of the complaint, on 10.09.2022, FIR bearing No. 229/2022 was registered at Police Station, Itanagar under Sections 120-B, 420, 406, 407, and 409 of the Indian Penal Code, 1860 against one teacher, Mr. Akhilesh Yadav of a coaching institute. APPSC cancelled the Preliminary and Mains Examination on 20.09.2022. Concerned with such allegations, the matter was transferred to the Special Investigation Cell (Vigilance) (hereinafter referred to as "SIC (Vigilance)") for further inquiry on 27.09.2022 and renumbered as SIC Vigilance PS Case No. 11/2022 and Sections 7, 8 and 13(2) of Prevention of Corruption Act, 1988 were also invoked in addition to offences under the Indian Penal Code, 1860. Subsequently, on 26.10.2022, it was transferred to Central Bureau of Investigation, Anti-Corruption Bureau, Guwahati (hereinafter referred to as "CBI") and renumbered as Case No. RC0172022A0009.

8. Further complaints were filed with SIC (Vigilance) regarding possible leakages in earlier examinations, alleging the involvement of APPSC members, which were also transferred to CBI for collective investigation. To address the magnitude of the allegations, during pendency of the criminal proceedings, the Government of Arunachal Pradesh on 21.09.2022 constituted a Three-member High-level Inquiry Committee (hereinafter referred to as "Inquiry Committee") to probe into the irregularities in the Mains Examination. The relevant portion of the terms of reference of the Committee is quoted below: -

"The terms of Reference of the Committee shall be as under: -

(i) To inquire into all aspects of the incident of leakage of question paper in the APPSC exam held on 26th and 27th August 2022;

(ii) To inquire if the standard operating procedures including setting of question papers and design of question paper booklets were followed;

(iii) To inquire into the lapses on the part of officers / officials involved directly / indirectly in the recruitment process;

(iv) To recommend changes in the recruitment process including Standard Operating Procedures followed by the Commission;

(v) To recommend appropriate modifications in the selection process of officials deputed in APPSC and

(vi) To make recommendations on any other related issues."

9. From a bare perusal of these terms of reference, it is abundantly clear that from the very inception of the Inquiry Committee formed by the State Government to probe into the irregularities in the Mains Examination, no specific term of reference was formulated in respect of the actions of the Chairman or Members of the APPSC.

10. The Inquiry Committee submitted its report on 06.10.2022, pointing out lapses in Standard Operating Procedure (hereinafter referred to as "SOP") with regard to maintaining the secrecy of the question papers for the Mains Examination and other lacunae, and concluded that the SOP and the APPSC Conduct of Examination Guidelines, 2017 (hereinafter referred to as "2017 Guidelines") have not been followed by the APPSC. Meanwhile, on 14.10.2022, the Chairman of the APPSC resigned on moral grounds. The State Government after the receipt of the inquiry report deliberated on the possible actions and sought legal opinion of the Ld. Advocate General of the State, who on 27.10.2022 opined to invoke Article 317(1) of the Constitution of India. Observing this, the Hon'ble Chief Minister of Arunachal Pradesh on the same day requested the Hon'ble Governor of Arunachal Pradesh to place the matter before the Hon'ble President of India for making reference under Article 317(1) to the Supreme Court for removal of the four members of the APPSC. In the meanwhile, three members, namely, Maj. Gen. (Retd.) Jarken Gamlin and Maj. Gen. (Retd.) Ganesh Singh Bisht on 27.10.2022 and Mr. Tsering Naksang on 31.10.2022, tendered their resignations. Hence, the Respondent herein was the only remaining member of the APPSC. Thereafter, on 02.12.2022, the Hon'ble Governor of the State requested the Hon'ble President of India to make a reference to the Supreme Court of India for initiating proceedings under Article 317(1) of the Constitution of India for removal of the petitioner.

11. Meanwhile, the CBI filed a chargesheet on 08.12.2022 and supplementary chargesheets on 30.01.2023 and 28.03.2023, wherein the Respondent was not named as an accused. The investigation disclosed that Mr. Takte Jerang, the Deputy Secretary-cum-Deputy Controller of Examinations (DCoE), APPSC is primarily responsible for the leakage of the Mains Examination paper. It was revealed that he accepted a huge monetary consideration from several private persons for supply of question papers for the subject examination. The scheme involved tampering with sealed packets, copying papers, and resealing them with the aid of one Mr. Dilip Saha, a representative of printer Blessings Secured Press Private Limited, responsible for printing the question papers.

12. On 18.04.2023, the Hon'ble President of India made a reference to this Court under Article 317(1) for removal of the Respondent on six charges as quoted below: -

"I. That the question paper of AE (Civil) Main examination 2022 was allegedly leaked in connivance with the functionaries of the Commission. Ms. Mepung Tadar Bage, along with the Chairman and other Members of the Commission failed to prevent the leak of question papers and to ensure the confidentiality in the Commission's working.

II. It is a matter of fact that multiple question papers for various examinations were set by the Commission since 2017 about all of which, serious doubts in regard to their leakage have arisen on the basis of complaints and that this called for effecting changes in the relevant guidelines.

III. If remedial action had been taken in good time by relevant changes in the examination guidelines and ensuring vigil and supervision, the leak in the year 2022 could have been avoided.

IV. Ms. MepungTadarBage, had a collective responsibility along with Chairman and other Members of the Commission, to ensure the confidentiality in Commission's working, Ms. MepungTadarBage being the Member looking after all legal matters as per allocation of work, was under an exclusive responsibility which she failed to discharge.

V. The Commission did not finalize the conduct of examination guidelines 2022, despite being aware of the fact that this was last done in 2017. As a Member looking after legal matters, it was Ms. MepungTadarBage's bounden duty to have the Commission address the subject of changes in the guidelines.

VI. In June, 2022, the Commission decided to keep in abeyance, its own orders related to punishment awarded to candidates found using unfair means. Similarly, it was the duty of Ms. MepungTadarBage to advise against keeping the above said orders in abeyance."

13. After the reference, the Respondent was placed under suspension on 15.06.2023 by order of the Hon'ble Governor of the State in accordance with Article 317(2) of the Constitution of India.

14. On receiving the reference, notice was issued to the Attorney General for India, the Advocate General for the State of Arunachal Pradesh and the Respondent. After filing the written statement on 02.11.2023 by the Respondent, an order was passed on 03.11.2023 to exchange the points for determination of this reference. Pursuant to this, on 07.02.2024, a joint statement of issues agreed to by the counsels of both the parties (APPSC and the Respondent respectively) and settled by the Attorney General for India was submitted before this Court. Accordingly, on 16.02.2024, this Court formulated the following issues for consideration: -

"1. Whether the conduct of Ms. MepungTadarBage the subject of reference, can be considered as 'misbehaviour' within the meaning of Article 317 of the Constitution by reason of her failure towards ensuring complete integrity in all matters relating to the AE mains examination conducted by Arunachal Pradesh Public Service Commission (APPSC) in August, 2022, and as such is liable to be removed as a member?

2. Whether the alleged vagueness of charges raised on behalf of the respondent-member can be an issue in the enquiry under Article 317 of the Constitution?

3. Whether there is any scope or room for raising the question of non-application of mind by any authority preceding the request for Reference made by the Hon'ble President of India under

Article 317 of the Constitution?

4. Whether all the Charges are duly proved against the Respondent?"

15. After the formulation of the issues, counsel for both the parties filed their list of witnesses. As directed vide order dated 09.07.2024, the evidence was recorded by the Registrar (Judicial) of this Court which concluded on 20.09.2024 and the reference was placed for hearing before this Court.

16. Prior to adverting to the issues as framed, it is essential to refer to Article 317 of the Constitution of India which deals with removal and suspension of the Chairman or Member of a Public Service Commission. The said Article is reproduced as under: -

"Article - 317. Removal and suspension of a member of a Public Service Commission.

1. Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

2. The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause

(1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

3. Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be, -

a. is adjudged an insolvent; or

b. engages during his term of office in any paid employment outside the duties of his office; or

c. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

4. If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour."

17. Article 317 of the Constitution of India specifies that the Chairman or any other member of a Public Service Commission shall only be removed by an order of the Hon'ble President of India on the ground of misbehaviour. The said misbehaviour may be proved by inquiry before the Supreme Court of India following the procedure prescribed in Order XLIII of the Supreme Court Rules, 2013 framed under Article 145(1)(j) of the Constitution of India and the report in this regard shall be submitted to the Hon'ble President of India. Clause 4 of Article 317 of the Constitution of India specifies an example of misbehaviour that if the Chairman or any other member of a Public Service Commission becomes in any way concerned or interested in any contract of agreement made on behalf of the Government of India or the Government of a State or participates in any way in profit thereof or in any benefit or emolument arising therefrom. In addition to the above, what may be included within the expression of 'misbehaviour' is required to be examined in the present context.

18. A careful reading of Article 317 of the Constitution of India and the supporting judicial precedents shows that the said provision has been enshrined in the Constitution of India to afford greater protection to the Members of the Commission. The members, serving on an upper mantle, are susceptible to political pressure, and in order to safeguard them from the whims of the powers of the day, the Constituent Assembly, in their endless wisdom, had laid forth an elaborate procedure for their removal. Thus, the members of the Public Service Commission can only be removed strictly by complying the rigour of Article 317 of the Constitution of India, and not through any regular departmental inquiry, thereby acting as a qualification on the doctrine of pleasure that is exercised by the President regarding various constitutional posts.

19. As per this provision, a member of the Commission can be removed on two grounds - firstly, on the ground of misbehaviour, after the President has made a reference to this Court, and in consonance with the prescribed procedure, and secondly, by reason of automatic disqualification under Articles 317(3) and 317(4) of the Constitution. The term "misbehaviour" has neither been defined in the Constitution, nor has it been contradistinguished from the word "misconduct". As rules of Statutory Interpretation would govern the subject, however, resort must be made to the judicial precedents and legal dictionaries to cull out a meaning most befitting the circumstances of the instant matter.

What may constitute 'misbehaviour' under Article 317 of the Constitution of India - previous references

20. There are multiple external aids available to the Courts to discern the meaning of a specific provision. Constituent Assembly Debates is one such external aid available to the Court to understand the rationale behind a particular provision and interpreting that provision in the light of the intention of the framers of the Constitution.

Constituent Assembly Debates

21. In the Constituent Assembly Debates, Dr. BR Ambedkar spoke thus on misbehaviour (CAD, Vol. 9, pp. 574-575):

"With regard to misbehaviour the provision is somewhat peculiar. The Honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed, that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a stiff and severe provision for the removal of members of the Public Service Commission. Consequently, it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the provisions contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a High Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to the removal of Public Service Commission, wherever there is a case of misbehaviour."

22. The President of the Constituent Assembly, Dr. Rajendra Prasad, stated in unequivocal terms the following lines (CAD, Vol. 11, pp. 990 - 991):

"Our Constitution has devised certain independent agencies to deal with particular matters. Thus, it has provided for Public Service Commission both for the Union and for the States and placed such Commission on an independent footing so that they may discharge their duties without being influenced by the Executive. One of the things against which we have to guard is that there should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced into our Constitution will be very helpful in this direction."

23. Mr. H.V. Kamath, another imminent member of the Constitutional Assembly was of the following opinion (CAD, Vol. 9, pp. 586 - 587):

"It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration-call it steel frame or what you will, - a machinery which is so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress in spite of the earnestness of those people at the helm of affairs in the country. Wherever democratic institutions exist experience has shown that it is essential to protect the public Service as far as possible from political or personal influence

and to give it that position of stability and security which is vital to its successful working as an impartial and efficient instrument by which Government-of whatever political complexion-may give effect to their policies. It is imperative that whichever Government comes into power, the permanent services must carry out the policy laid down by the Government for the time being in office. In countries where this principle has been neglected, and where instead the spoils system has taken its place, inefficient and disorganised Civil Service has been the inevitable result and corruption has become rampant with all its attendant consequences. It is therefore of the utmost importance that the Public Service Commissions that we contemplate under these articles should be completely independent of the Government of the day whether at the Centre or in the States. Otherwise, I am afraid the Civil Services will apprehend that amenability to Ministerial pressure and a correct attitude towards questions in which a little coterie or the group for the time being in power, is interested, will secure them promotions rather than merit or efficiency. I have often known that a Secretary to a Minister if he volunteers an opinion which is not palatable to the Minister in Office, the Minister puts him on the blacklist and he is not considered favourably for future promotions. Of course, once a policy is laid down the public servants have to carry them out. But I know of instance where Ministers have looked upon with disfavour Secretaries or other servants, whose opinion was invited criticising their policies: this is a very undesirable state of affairs and I am sure that sort of thing should not be encouraged. Therefore, I hold that where there is any apprehension on the part of Civil Servants that, if they are amenable to Ministerial pressure, they are likely to be promoted, and that merit and efficiency countless, if that mentality seizes public servants, there is likely to be demoralisation throughout the ranks of the services."

24. From the aforementioned excerpts of the constituent assembly debates, we get a peek into the minds of the Framers and their intention while framing Article 317. Their primary goal was to ensure the autonomy and independence of the Public Service Commissions, and to secure it, they prescribed an elaborate procedure for the removal of its members.

Reports of this Court in previous references and judgements

25. In order to further understand the meaning of 'misbehaviour', guidance may be taken from the previous reports. This Court had the first ever occasion to deal with a reference under Article 317(1) of Constitution of India - where a member of the Punjab Public Service Commission was alleged to have slapped the Chairperson in the presence of the other members. In Reference under Article 317(1) of the Constitution of India, In re, (Special Reference No. 1 of 1983) reported in (1983) 4 SCC 258 this Court dealt with the procedural contours of an inquiry under Article 317 of the Constitution of India and held that any allegation of misbehaviour against a member of a Public Service Commission is to be looked into by the Supreme Court on merits considering the facts and circumstances of the case.

"6. The power of the President to make a reference to this Court under Article 317(1) is not subject to the condition precedent that he must first have the facts examined by some other body of authority. That Article provides that the Chairman or any other Member of a Public Service Commission can only be removed from his office on the ground of misbehaviour after the Supreme Court on a Reference made to it by the President reports that the Chairman or such other person ought to be removed on any such ground...

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7. ...The inquiry which this Court is required to hold is not into the limited question whether, on the basis of facts found by the President, the charge of misbehaviour is made out and whether the misbehaviour is of such a nature as to warrant the removal of the person from his office. The inquiry contemplated by the article is into the facts themselves and facts also, so as to enable this Court to pronounce upon the question whether the allegations made against the Chairman or Member are proved at all...Members of Public Service Commissions are, in one sense, given a higher degree of protection by the elimination, as far as possible, of political pressures in the matter of their removal. Any allegation of misbehaviour made against them has to be examined by the Supreme Court on merits unlike the allegations made against those others whose removal on the ground of proved misbehaviour or incapacity depends upon the will of the Parliament..."

26. In the same Special Reference, the report on merits was delivered subsequently and reported in (1990) 4 SCC 262 wherein this Court held that by indulging in physical violence, the member of the Public Service Commission had failed to maintain the standard of conduct expected from a member of Public Service Commission and such conduct would amount to 'misbehaviour' under Article 317 of the Constitution of India. The relevant paragraph has been quoted herein: -

"31. Now the question is whether Sri Saini deserved to be removed on account of his conduct. Persons occupying high public offices should maintain irreproachable behaviour. A certain minimum standard of code of conduct is expected of them. What may be excusable for an uneducated young man cannot be tolerated if a Member of a Public Service Commission is involved. Besides, it has to be remembered that the respondent and the Chairman were not thrashing out a personal matter or a private dispute. They were discussing a question involving their office and this in broad daylight in the open corridor of the Commission's building. Whatever the provocation offered by the Chairman, the respondent was not justified in losing his cool to the extent of indulging in physical violence. That the violence should have been directed against a lady makes his conduct all the more reprehensible. In our view, Sri Saini miserably failed in maintaining the standard of conduct expected of a Member of the Commission and thereby brought great disrepute to his office. Hence our answer to the question referred by the President is that Sri Saini's conduct amounted to misbehaviour within the

meaning of Article 317(1) of the Constitution and it rendered him liable to be removed from his office of the Member of the Punjab Public Service Commission."

27. This Court, in *Sher Singh, In Re* (Reference Case No. 1 of 1995) reported in (1997) 3 SCC 216 had the occasion to deal with an allegation against a member of the Haryana Public Service Commission who had allegedly attempted to influence the Commission in favour of his nephew, a candidate in a competitive examination for recruitment to the Haryana Civil Service (Executive Branch). This Court looked through the entirety of evidence and primarily relied on the testimony of the Chairman and the Secretary of the Public Service Commission to hold that there was proof of the member trying to influence the Commission in favour of his nephew and he had not declared that his nephew was participating in the examination, which amounted to misbehaviour. Relevant part of the Report reads as under:

"22. Shri Sher Singh repeatedly denies that he ever made any approach to the Chairman to influence the result of his nephew. He, however, admits that he never formally declared to the Commission that his nephew was appearing in the examination. Nor did he ever disassociate himself from the said examination. His allegation that Shri Kataria had worked at the instance of the then Chief Minister has not been substantiated.

23. The entire evidence on record suggests that Shri Sher Singh had some axe to grind. The testimony of Shri Kataria and Shri Tuli that Shri Sher Singh wanted to influence the result of his nephew read with all the other evidence on record goes to prove that Shri Sher Singh did approach Shri Kataria for favours for his nephew. The allegation made in the resignation letter and extracted in the order of Reference is, therefore, held to be proved."

28. In *Ram Ashray Yadav (Dr.), Chairman, Bihar Public Service Commission, In R/o* (Special Reference No. 1 of 1997) reported in (2000) 4 SCC 309, this Court dealt with multifarious allegations of misbehaviour against the Chairman of the Bihar Public Service Commission, and held that mere signing of a final selection list as the Chairman, in discharge of official duties, would not imply that he influenced the selection committee in favour of a candidate in absence of specific material against him acting in such manner in his personal, official or individual capacity. It was observed that while the Chairman did not exhibit exemplary behaviour or conduct which was expected of him, the allegations against him would amount to lapses but it would not amount to 'misbehaviour' within the meaning of Article 317 of the Constitution of India. The relevant part of the report is reproduced as under: -

"21. A critical analysis of the judgment in *Urmila Kumari* case [(1993) 1 Pat LJR 226] shows that while the Commission, as a whole, was indicted, no adverse comment of any personal nature had been made by the High Court against the Chairman, Dr Yadav. There is no specific indictment of the Chairman, Dr Yadav, as such. There is no finding that Dr Yadav had in any manner influenced the

selection of Respondent 3 in that case. It would be wholly conjectural to hold that merely because Dr Yadav had signed the final selection list as Chairman (which he was obliged to do in discharge of his official duties), he should be deemed to have influenced other members of the Selection Committee including the outside experts. The indictment, even otherwise was of the procedure which was followed by the Commission and not of any action of the Chairman. We are informed that after the judgment in Urmila Kumari case [(1993) 1 Pat LJR 226] the procedure for selection has been modified and corrected. In the absence of any indictment of Dr Yadav, in his personal, official or individual capacity or any other material to show that he had personally influenced the Interview Committee (where he was not even present) to act in a particular manner, it would be unfair to hold that Dr Yadav had committed any misbehaviour in that selection process. We agree with DrDhavan that no misfeasance on the part of Dr Yadav has even been remotely established insofar as this charge is concerned.

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33. Having dealt with all such charges, which the learned Attorney General conceded alone required to be examined and hearing learned counsel for the parties, we, however, find that all does not appear to be well with the manner of functioning of the Bihar Public Service Commission, during the period under consideration. The Chairman of the Commission, DrYadav, appears at times, did not exhibit exemplary behaviour or conduct, expected of him, but none of the allegations which have been made against him in various charges, which may, at best, amount to lapses, can be said to be such which amount to "misbehaviour" within the meaning of Article 317 of the Constitution inviting action of his removal from office under Article 317(1)."

29. While dealing with the reference in the case of SayaleeSajeev Joshi (Smt), Member, Maharashtra Public Service Commission, In Re (Reference No. 1 of 2004) reported in (2007)11 SCC 547, this Court held that there was inadequate evidence to prove that the member had colluded with a third party to influence the Controller of Examination to favour some candidates in a recruitment examination, but found that misbehaviour was proved only in respect of Charge 3 that the member had not revealed that her daughter had participated in a recruitment process while she was a member of the Commission. While reaching such a finding, the Court relied upon the previous decisions and defined the scope of enquiry to be undertaken by the Court in a reference under Article 317 of the Constitution of India. Relevant part of the Report reads as under:

"16.The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and

impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts. The task of this Court therefore is to find out as a fact whether the materials disclose a conduct on the part of the respondent (a constitutional functionary) which would be misbehaviour within the meaning of Article 317(1) of the Constitution of India. Our approach to the reference in answering the charges framed has to be on this basis..."

30. Ultimately, this Court while deciding the above reference held as follows: -

"48. The respondent was holding the position of a member of a constitutional body having a higher status. It is not possible to appreciate the stand of the respondent that even while the employees and officers of the Commission had an obligation to inform the Commission about the appearance of their near relations in any examination conducted by the Commission, no such obligation was attached to a member of the Commission. May be, a member of the Commission would not qualify as an employee or as an officer of the Commission, but that cannot absolve a member from the obligation of disclosing to the Commission that her daughter was to appear in the examination conducted by the Commission. Obviously, the object was to ensure that she did not participate in that particular selection process lest charges are raised of partiality in the process of selection. Normally, in such a situation the member or members are to be kept out of the particular process. Since, admittedly the daughter of the respondent had applied for appearing in the 2002 Examination from two places and the respondent had failed to inform the Commission about the participation of her daughter in such an examination, it has to be held that she has misconducted herself by not making a disclosure to the Commission in that regard. The fact that the daughter later on did not actually appear in the examination would make no difference.

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151. It is true that the respondent was in constant touch with Nitin Sathe. We have already discountenanced the story that she was contacting Nitin Sathe only in connection with the sale of her plot in Pune. But even then, it cannot be said that there is adequate evidence to show any collusion with Nitin Sathe as reflected by this charge. Therefore, though some suspicions are raised regarding the conduct of the respondent in this Court in the light of her own evidence, it is not possible to say that the charge, as such, has been made out so as to enable us to hold that this charge is proved against the respondent.

152. Thus, based on our finding on Charge 3 and our observations on Charge 2, we are of the view that the respondent has not behaved in a manner befitting a member of a constitutional body like the Public Service Commission and under the circumstances we answer the reference made by the Hon'ble the President of India to us in the affirmative only as regards Charge 3."

31. In Reference under Article 317(1) of the Constitution of India, In re, (Reference No. 1 of 2003) reported in (2009) 1 SCC 337, against the Chairman of the Orissa Public Service Commission with the allegation that even though he had given an undertaking that none of his relatives were participating in the recruitment process for Orissa Civil Services, his married daughters had applied for the same. This Court, in the facts and circumstances of the case, held that the daughters of the Chairman had withdrawn their applications prior to the examination and he had not taken any step towards selecting them, and therefore there was no wilful abuse of the office of Chairman. This Court while observing that 'misbehaviour' is not defined per se in the Constitution, held as under: -

"28. Article 317, like Article 124(4) does not define misbehaviour or enumerate what acts would constitute misbehaviour except that clause (4) of Article 317 makes an improvement in specifying misbehaviour, namely, being interested in any government contract. Outside clause (4), it is left to the Supreme Court to determine whether any particular act or conduct is of such a nature as to warrant the removal of the Chairman or member on the ground of "misbehaviour". Ordinarily bribery, corruption and the like should be regarded as such "misbehaviour". But there is no limitation prescribed by the Constitution itself.

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30. In Article 124(4) "misbehaviour" means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or the statute under consideration. Every act or conduct or error of judgment or negligence by a constitutional authority per se does not amount to misbehaviour. Misconduct implies a creation of some degree of mens rea by the doer. (1) Wilful abuse of constitutional office, (2) wilful misconduct in the office, (3) corruption, (4) lack of integrity or any other offence involving moral turpitude would be misbehaviour. (5) Judicial finding of guilt of grave crime is misconduct. (6) Persistent failure to perform duties or wilful abuse of the office would be misbehaviour.."

32. Reference Under Article 317(1) of the Constitution of India, Chhattisgarh Public Service Commission, (Reference No. 1 of 2006) reported in (2009) 8 SCC 41, was made against the Chairman of the Chhattisgarh Public Service Commission with the charge inter alia of irregularity and mismanagement in the conduct of the Chhattisgarh Civil Services Examination. This Court held that no misbehaviour was proved on the part of the Chairman since irregularities in the examination were due to the fault of some of the officers of the Public Service Commission and were not attributable to the Chairman specifically. It was also held that since there is no definition of 'misbehaviour' in Article 317 of the Constitution of India, it is only after a fact-finding inquiry that it can be decided whether the alleged acts of the Chairman would amount to 'misbehaviour'. Relevant portion of the aforesaid report has been quoted herein: -

"6. Article 317 of the Constitution does not define "misbehaviour" or enumerate what acts would constitute "misbehaviour". It is only after a fact-finding inquiry is held, it could be said whether the alleged acts committed by the Chairman amount to "misbehaviour".

10. The main complaint regarding the Preliminary Civil Services Examination held in 2005 was that for General Studies paper, there was a mixing up of model answer keys which prompted the leader of a political party to make a complaint to the Chief Minister. RW 2 who was the Secretary to the Governor deposed that the answer keys and the questions got mixed up due to computer error. The witnesses examined did not depose that there was any negligence on the part of the Chairman of the Public Service Commission. A series of individual complaints have been referred to but, in these matters, the Chairman of the Public Service Commission was not found responsible.

12. All these facts would only indicate that the Chairman of the Public Service Commission was unnecessarily dragged on to this controversy and in view of the evidence adduced, it is clear that if any irregularities had taken place in the conduct of the examination, it was due to the fault of some of the officers of the Public Service Commission and not by Shri Ashok Darbari, Chairman of the Public Service Commission."

33. In *Mehar Singh Saini, In re* (Reference No. 2 of 2008) reported in (2010) 13 SCC 586, this Court dealt with a reference in respect of the Chairman and members of the Haryana Public Service Commission with the allegation of massive irregularities and illegalities in the process of selection made by the Commission. It was also alleged that the Chairman and other members of the Commission did not cooperate in the investigation being carried out by the State Vigilance Bureau in respect of selections made by the Commission even after specific directions were issued against them to cooperate by the High Court of Punjab and Haryana. In the said context, this Court discussed the difference between 'misbehaviour', 'misconduct' and 'proved misbehaviour' and held that the word 'misbehaviour' must be given wide import and cannot be restrictively interpreted.

34. The Court held that the expression 'misbehaviour' generally refers to conduct which might erode the faith and confidence of the public at large in such constitutional office. After reaching such a finding, this Court observed that in the facts of the case, the misbehaviour of the Chairman and members of the Commission stood proved inter-alia that the members of the Commission had not maintained the required standard of transparency and fairness in decision-making by endorsing and approving the name of a person and then selecting him, recommending his name for recruitment when he had applied with a false certificate. Additionally, while relying on the evidence on record, this Court finally held that the Chairman and members of the Commission had not cooperated in furnishing records and documents to the investigating authorities. The Court acknowledged that there was no direct evidence to show that manipulations in

the recruitment process had been carried out by the Chairman and the members of the Commission, but they were duty-bound to ensure judicious and fair selection and prevent any act of commission or omission which would diminish public confidence in the functioning of the constitutional body. Relevant portion of the aforementioned report is quoted herein: -

"63. The plain language of Article 317(1) indicates that the expression "on the ground of misbehaviour" is an expression of wide connotation and cannot be given a restricted meaning. Normally, such term should be understood keeping in view the nature of the misbehaviour complained of, the office in question and the standards expected to be maintained by the constitutional body in discharge of its functions.

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74.Misconduct may relate to graver acts, deeds and omissions while misbehaviour may relate to the standards expected to be maintained by the holder of the constitutional office. In other words, misbehaviour/misconduct could be used interchangeably in certain circumstances while in others they may have to be understood as clearly distinguishable. "Misbehaviour" may include behaviour that was not expected of the holder of the constitutional office but would not include "grave misconduct" or "proved misbehaviour". This distinction has to be kept in mind by this Court where the constitutional mandate refers to "misbehaviour" which is an expression of very wide magnitude. As already held by this Court in Reference No. 1 of 2003, this term must be construed very liberally so as to bring within its ambit the behaviour of the Chairman/member of the Commission which, as per settled norms, was not expected of him/her. The expression "misbehaviour" generally refers to a conduct which might erode the faith and confidence of the public at large in such constitutional office.

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110. The application of Pradeep Sangwan was liable to be rejected at the very threshold in terms of Condition 2 of the general clarifications but the same was accepted and he was called for interview and selected. Despite the complaint, which subsequently was found to be correct, his name was also forwarded for appointment to the State Government. We are not holding that furnishing of the false certificate by Pradeep Sangwan was an act attributable to the Chairman/members of the Commission but its acceptance, despite the complaint and the manner in which Pradeep Sangwan was selected and recommended for appointment to a very responsible post in the State Government, certainly is clothed in suspicion and favouritism. We are informed that Pradeep Sangwan is now no longer in service.

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140. When all these facts are examined in their correct perspective, it is obvious that withholding of record and non-cooperative attitude adopted by the then

Chairman/members of the Commission, were not for bona fide reasons and, much less, to protect the constitutional stature of the Commission. On the contrary, the image of the Commission has been lowered in the eyes of the public and the rule of fairness and merit has been substantially ignored in the processes of selection for different posts. It is true, and as argued on behalf of the private respondents, that there is no direct evidence before us to show that these manipulations have actually been carried out by the private respondents but it is equally true that they, being the Chairman and members of the Commission, were duty-bound to exercise proper administrative control to ensure judicious and fair selection and prevent any act of commission or omission which would diminish public confidence in the functioning of the constitutional body. The claim of privilege for non-production of documents lacks bona fides and was, primarily, intended to withhold the records from the investigating agencies to cover up the above misdeeds, irregularities and illegalities.

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147. On a holistic view of the matter, it is apparent that irregularities and acts of irresponsibility committed by the private respondents delineate their misbehaviour in terms of Article 317(1) of the Constitution as it certainly lowers the dignity of the Commission. The burden of proof applicable to such cases is not that required under the criminal jurisprudence i.e. to prove the charge "beyond any reasonable doubt". Where the facts supported by record point a finger at the Chairman/member of the Commission with some certainty, it may amount to misbehaviour in the given facts and circumstances of a case. Rule of "reasonable preponderance of probabilities" would be the right standard to be applied to such cases. The Court is not called upon to record finding of guilt as if in a criminal case. The charge has to be construed in a liberal manner so as to ensure completion of inquiry in terms of Article 317(1) of the Constitution while keeping in mind the constitutional stature of the office. The private respondents were certainly in a position to prevent most of the events which have occurred in the present case and have tarnished the image of the Commission. In our view the maxim *qui non prohibet quod prohibere potest facere videtur* would alter the equities against the private respondents."

35. In the context of 'misbehaviour' under Article 124 of the Constitution of India, this court illuminatingly laid down the scope and meaning of the word 'misbehaviour' in Article 124(4) in the case of *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457. The relevant paragraph has been quoted hereunder: -

"24. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the *Law Lexicon* by P. Ramanatha Aiyar, 1987 Edn. at p. 821, collected from several decisions, the

meaning of the word 'misconduct', is stated to be vague and relative term. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against a solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy member of the legal profession". In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in *First Grade Pleader, Re* [AIR 1931 Mad 422] held that if a legal practitioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of the party have been affected."

36. In *Krishna Swami v. Union of India*, (1992) 4 SCC 605, this Court considered the scope of 'misbehaviour' in Article 124(4) and held that: -

"71. Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea."

37. From the opinions of this Court in different reference cases as well as other judgements enumerated hereinabove, it is luculent that this Court has on numerous occasions been called upon to interpret the meaning of the word 'misbehaviour' under Article 317 of the Constitution of India. Article 317 of the Constitution of India does not define the term 'misbehaviour'. Thus, it must be given a wider import; it cannot be narrowly construed and is required to be understood in the context of the alleged misbehaviour complained of, the office in question and the standards required to be maintained by a person as a necessary corollary of holding such office. It is different from the term 'proved

misbehaviour' under Article 124(4) of the Constitution of India. The scheme of Article 317 of the Constitution of India is such that misbehaviour by a member of Public Service Commission has to be established in an inquiry conducted by the Supreme Court upon reference by the Hon'ble President of India, and only then the Chairman or Members may be removed from the office, whereas under clause 4 of Article 124 of the Constitution of India, 'proved misbehaviour' is a condition precedent for the Parliament to move an address before the Hon'ble President of India for removal of a Judge of the Supreme Court from the office, which has to be proved before a separate Committee constituted under the appropriate legislation. The framers of the Constitution have mindfully used distinct expressions in different articles, the use of the term 'proved' in Article 124 of the Constitution of India indicates their intention to link respective constitutional offices and misbehaviour in terms of the standards to be upheld by the holder of such constitutional office.

Misbehaviour & Misconduct through the lens of Legal Dictionaries

38. Misbehaviour is also different from misconduct. As per Advanced Law Lexicon, 7th Edn., 2024 by P. RamanathaAiyar, misbehaviour is defined as "Ill conduct; improper or unlawful behaviour." Whereas misconduct is defined as, "wrongful intention, and not a mere error of judgment." Misconduct has an element of mens rea, whereas misbehaviour may include any conduct on part of the member which does not align with standards of the office. As held in Mehar Singh Saini (Supra), misconduct may include graver acts or omissions whereas misbehaviour refers to a conduct which has the potential to destroy the faith in a public office.

39. Black's Law Dictionary, in its 6th Edn. at Pg. 998, defines 'Misbehaviour' as "ill conduct, improper or unlawful behaviour", and it defines 'Misconduct' at Pg. 999 as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness". 'Misconduct in office' was defined as "Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act".

40. The Encyclopedic Law Dictionary, in its 3rd Edn., at Pg. 720 defines 'Misbehaviour' as "improper or unlawful conduct, generally applied to a breach of duty or propriety by an officer, witness, etc. not amounting to a crime".

41. The Supreme Court, when called upon to decide a reference under Article 317 of the Constitution of India, must embark on a fact-finding inquiry to arrive at a conclusion as to whether in the facts and circumstances of that case, the allegations against the Chairman or Member of a Public Service Commission

would amount to misbehaviour. Misbehaviour has been interpreted to have a larger ambit than misconduct at a somewhat normative level - every misconduct might be considered a misbehaviour but not every misbehaviour amounts to misconduct, since even acts which bring disrepute to the office of the Public Service Commission have been interpreted by this Court to be misbehaviour. As we have already discussed above, instances of physical violence between the members, non-declaration of relatives participating in a recruitment process conducted by the Commission and attempting to influence the Commission to favour a particular candidate have all been considered as instances of 'misbehaviour' by this Court. This Court has therefore given an extensive, wide and liberal interpretation to the term 'misbehaviour'. Even though, generally, this Court has negated allegations of misbehaviour against members of a Public Service Commission on account of lack of direct evidence linking such member to irregularities alleged, but where for instance in *Mehar Singh Saini (Supra)*, on the basis of evidence the inaction and lack of due diligence of the Commission is absolutely glaring at a prima facie level and palpably illegal and reeks of favouritism, the Court has taken a view that even though there might be no direct evidence linking the members to the irregularities alleged, the responsibility of the members of the Commission cannot be washed away.

42. The construction of the language used in Article 317 of the Constitution of India, if given a plain reading, however, makes it clear that removal and suspension of a member of a Public Service Commission is in personam and not of the entire Public Service Commission or its members as a collective entity. The inquiry and eventual recommendation for removal, if any, must be specific to the conduct of a particular office-bearer with respect to any act or omission constituting 'misbehaviour' done in their official capacity. For proving 'misbehaviour' under Article 317 of the Constitution of India, in order to remove a Chairman or Member of a Public Service Commission upon reference being made by the Hon'ble President of India, it is generally necessary to demonstrate with cogent material as per the procedure laid down that the conduct complained of and charges formulated are attributable to the individual in question.

Significance of the office of Chairman of Public Service Commission and its Members

43. Adequate focus must be given to the importance of the public office in question since in the context of Constituent Assembly debates and Article 317 of the Constitution of India, the Public Service Commission is a Constitutional body which must, on one hand, be completely independent and without any obligation towards the Executive while on the other hand, its Chairman and members must be beyond reproach, with exemplary ethical and moral standards, in order to retain the faith of the common man in the process of selection and appointments to public offices. As apparent from the above referred judgments, allegations of misbehaviour can't be adjudicated in vacuum. Such adjudication ought to be in light of the factual set-up and the standard of behaviour expected from the

Chairperson and Members of the Commission because the fact of misbehaviour implies a departure from accepted standards in a manner sufficiently serious to call for removal. These expected standards of behaviour are natural consequences of the purpose underlying the establishment of Public Service Commissions.

44. These Commissions were established as independent constitutional bodies to ensure that the process of recruitment in public service became insulated from political pressure and that recruitment to public administrative posts is conducted with utmost fairness and transparency. Their role is not merely administrative but also constitutional in nature, as they serve as sentinels of public trust in the civil service system. This purpose was also echoed by Shri Raj Bahadur, member of the Constituent Assembly 'Constituent Assembly Debates, Vol. IX, Pg. 568-569 (Sixth Reprint, Lok Sabha Secretariat, 2014)' in the following manner -

"....if we go down deep to probe into the very basis and principles on which the public service commissions are created, we would find that the necessity these commissions was felt mainly on three grounds - firstly, that favouritism and nepotism were rampant when there were no such commission and individual likes or dislikes whims and fancies came into play; secondly, merit was not recognised and instead of merit, birth, descent or other such things were recognised as the basis of selection for government jobs; lastly, canvassing was free. In order to eliminate all such defects, in order to secure very best and most deserving men for all jobs in the state, we recognised the necessity for creating Public Service Commissions and thus, they came into being."

Similar views were endorsed by this Court in *Mehar Singh Saini, In Re (supra)* as reproduced hereunder -

"6. Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Commission can result in defects not only in the process of selection but also in the appointments to the public offices which, in turn, will affect effectiveness of administration of the State. Most of the democratic countries in the world have set up Public Service Commissions to make the matter of appointments free from nepotism and political patronage. For instance the *Conseild'Etat* in France, which is composed of the cream of the French Civil Service, has acquired considerable veneration for its capacity to police intelligently the complex administration of the modern State. Justice J.C. Shah in his report on the excesses of the Emergency, struck by the "unhealthy factors governing the relationship between Ministers and civil servants", recommended the adoption of *droit administratif* of the French model by the Government. He observed that the commitment of a public functionary should be to the duties of his office, their due performance with an emphasis on their ethical content and not to the ideologies, political or otherwise of the politicians, who administer the affairs of the State."

45. It is this pivotal purpose that presupposes impeccable conduct on the part of Chairman and Members of the Public Service Commissions. The integrity of the

Commissions' recommendations and the legitimacy of the recruitment processes they conduct depends upon the public perception that such decisions are free from any arbitrariness, bias, or personal interest. That is to say, a common man of this country expects honesty, integrity and complete objectivity from the Chairpersons and Members of the Commissions. These Commissions must function unbiased and impartially, so that the society does not lose confidence in its functioning. This Court in Reference under Article 317(1) of the Constitution of India, *In re*, (1990) 4 SCC 262 (Para 31) has explained these expected standards of behaviour as a minimum standard of code of conduct that is expected of the Chairpersons and Members of the Commissions. An act which may be excusable when carried out by a young educated person may not be tolerable if a Chairperson or Member of a Public Service Commission is involved. Such standard of irreproachable behaviour was also expected by this Court in *Mehar Singh Saini, In Re (Supra)* in manner as reproduced hereunder -

"8. The conduct of the Chairman and members of the Commission, in discharge of their duties, has to be above board and beyond censure. The credibility of the institution of the Public Service Commission is founded upon faith of the common man on its proper functioning. Constant allegations of corruption and promotion of family interests at the cost of national interest resulting in invocation of constitutional mechanism for the removal of Chairman/members of the Commission erode public confidence in the Commission. Prof. Brown and Prof. Garner's observation in their treatise *French Administrative Law*, 3rd Edn. (1983) in this regard can be usefully referred to. They said: 'The standard of behaviour of an administration depends in the last resort upon the quality and traditions of the public officials who compose it rather than upon such sanctions as may be exercised through a system of judicial control.'"

46. Membership in a Public Service Commission is a position of significant constitutional trust and responsibility. The credibility of such an institution, rests fundamentally on the faith of the common citizen in its fair and transparent functioning. Thus, any conduct on part of its members that appears subjective or raises suspicion, has the potential to erode the faith and undermine public confidence. Thus, it is imperative for a Public Service Commission to discharge its duties with utmost impartiality, free from any extraneous and suspect influences that could compromise its integrity. Articles 315 to 320 of the Constitution of India act like a complete code on Public Service Commissions, providing them independence for fair discharge of their functions, as well as ensuring their security and protection from any external interference. It is indisputable that the Chairperson and Members of a Public Service Commission must conform to a standard of conduct that is unimpeachable in the eyes of law. Their actions, decisions, and even omissions must reflect the fairness, and highest degree of integrity inherent in these constitutional offices. The standard of behaviour expected of them is thus neither ordinary nor comparable to that of other public servants; it is elevated by the very nature of the institution they represent. The removal of any such officeholder on the ground of misbehaviour, therefore,

must be assessed on these anvils. In a democratic polity that is constantly being shaped by ethos of transformative constitutionalism, the moral compass of those entrusted with such public responsibilities must remain unblemished.

ANALYSIS AND APPRECIATION OF EVIDENCE

47. As discussed above, in terms of the scheme of Article 317 of the Constitution of India, in the case at hand, a reference has been made by the Hon'ble President of India relying upon Chapter 7 of the report of the Inquiry Committee. Thus, a fact-finding inquiry has to be conducted in respect of the allegation of misbehaviour of Ms. MepungTadarBage, Member, APPSC.

48. In the said context, the reference to this Court was made on the basis of the report of the Inquiry Committee constituted on 21.09.2022. The terms of reference to the Inquiry Committee have already been referred to in para 8 of this report which relate to the incident of leakage of question paper in the Mains Examination for the recruitment on the post of Assistant Engineer (Civil) held on 26th and 27th August, 2022 conducted by the APPSC; that whether SOP regarding setting of question papers and its design were followed; to determine the lapses on the part of officers/officials involved in process of recruitment; recommendations for changes to the SOP by the Commission; recommendations regarding selection process of officials deputed in APPSC or to make any modifications and on any other related issues.

49. In respect of the said terms of reference, Chapter 7 of the Inquiry Committee report refers to observations and recommendations. The said Chapter 7 is divided into several clauses, but it does not indicate any personal indictment, or any act or omission relating to misbehaviour on the part of the Chairman or Members of the Commission. Further, Chapter 8 concludes by answering the said terms of reference. We have perused the report of the Inquiry Committee in its entirety; however, we do not find any specific act or omission of any Member of APPSC which has been pointed out in the report. Therefore, it can be safely observed that either in terms of the reference, or in reply to those terms of reference, the Inquiry Committee has not made any allegations indicating illegality or any act or omission on the part of Ms. MepungTadarBage, Member, APPSC in her individual official capacity purportedly constituting her misbehaviour.

50. The said report was placed before the Cabinet of the State of Arunachal Pradesh. After taking the advice of the Advocate General of the State, the Chief Minister of the State wrote a letter on 27.10.2022 to the Hon'ble Governor of the State, after which the Hon'ble Governor wrote a letter on 02.12.2022 to the Hon'ble President of India seeking to make a reference under Article 317 of the Constitution of India to the Supreme Court of India on the pretext that the removal of members of the incumbent APPSC and fresh reconstitution of the Commission can be a starting point to restore the credibility and trust.

51. In this conspectus, we shall now deal with the six charges levelled against Ms. MepungTadarBage in seriatim.

As regards Charge No. I

52. This charge relates to leakage of question papers for the Assistant Engineer (Civil) Mains Examination, 2022 allegedly with the connivance of the functionaries of the Commission. It is alleged that the Respondent along with the Chairman and other members failed to prevent the leakage of question paper and to ensure confidentiality in the functioning of the Commission. In reply to the said charge, the Respondent has stated that she was not allocated the work of paper setting, moderating, evaluation and printing with respect to Assistant Engineer (Civil) Mains Examination 2022.

53. In support of the said charge, nothing has been brought on record to substantiate the Respondent's alleged connivance in leakage of the question papers and how far she may be held responsible for not preventing it and ensuring confidentiality in the working of the APPSC. As per Chapter 7 of the report of the Inquiry Committee, it is clear that the allocation of work relating to question paper setting and moderating was done following the SOP of the APPSC. The Inquiry Committee while making observations compared the functioning of the APPSC with the Arunachal Pradesh Staff Selection Board (APSSB), and recommended that to enhance security, the work in the APPSC could be handled at the level of Secretary, APPSC, who is the senior-most serving officer in the Commission. It further made observations and recommendations for improvement in the process of conducting examinations. Hence, the entire report does not impute any allegation or personal indictment in the form of any act or omission by the Respondent, which would indicate even her negligence in fulfilling her duties as a member of the APPSC.

54. In order to support Charge No. I, the statement of P.W. - 1, SurajGurung was recorded, who at the relevant point of time was serving as Joint Secretary - cum - Controller of Examination. He was suspended after the question papers for the Mains Examination were leaked and disciplinary proceedings against him were pending. In his statement recorded by the Registrar of this Court, no specific assertion has been made that the Respondent was assigned the task of paper-setting or printing of the questions papers for the Mains Examination. It is also not specified how and in what manner the Respondent failed to prevent the leakage of the said question paper. It is merely said by P.W. - 1 that the overall supervision and monitoring of the affairs of the APPSC is the responsibility of the Chairman and Members of the Commission, which however later has been admitted as personal opinion of this witness in the cross-examination.

55. Another witness is P.W. - 2, Mr. TanyangRissang, who was working as Section Officer, Recruitment Section - A, has also not said anything with respect to the allegations under Charge No. I against the Respondent.

56. In defence, the statement of D.W. - 1, Mr. TseringNaksang has been recorded, who at the relevant point of time was a Member of the APPSC, but resigned on 31.10.2022. As per the SOP, being a member of the APPSC, he

conducted the draw of lots for selecting the final question paper set to be used in the Mains Examination. While deposing, he specifically stated that the Chairman and Members of the APPSC are not involved in the confidential aspect of the examination process, which is based on the rules and regulations of the Commission, i.e., 2017 Guidelines, as they are involved at the interview stage of the examination.

57. The Respondent has also testified as D.W. - 2. She stated that she started her tenure in office as indicated above on 13.08.2021, which is after the issuance of the advertisement for recruitment to the post of Assistant Engineer (Civil) on 04.05.2021. Further, as per the 2017 Guidelines, members of the APPSC are not involved in the affairs of the Commission concerning the setting of question papers; they are involved only at the stage of draw of lots for selection of one set of paper for the examination and at the interview stage, which is conducted much later.

58. Pertinently, in the Inquiry Committee's report, nothing is said with respect to Charge No. I against the Respondent. It is acknowledged in the report that the Controller of Examination, Deputy Controller of Examination or Assistant Controller of Examination were involved in setting, moderating and distribution of the papers. The report further notes that the investigation in the criminal case has revealed connivance between the officials of the APPSC and agent of the printer as found by the Inquiry Committee. In the criminal proceedings also, neither she has been made accused, nor anything has been indicated regarding her involvement in paper setting, moderating or leakage of any question paper. As such, in our view, Charge No. I in the reference has not been proved constituting any misbehaviour on the part of the Respondent.

As regards Charge No. II

59. This charge relates to previous examinations conducted by the APPSC since 2017 and their possible leakage on the basis of complaints raised in that regard, and not bringing changes in the relevant guidelines to address such issues. In the present case, the Respondent was appointed as a member of the APPSC on 12.08.2021 and she joined on 13.08.2021. There is no specific allegation against the Respondent that after her joining, she was given a particular duty which required her to carry out such changes in the guidelines, which she has failed to carry out. Further, a prima-facie reading of the charge indicates that the Respondent is sought to be made wholly responsible for not considering the possibility of leakages happening since 2017 and to bring about change in the guidelines. It is clear that the Respondent was appointed on 12.08.2021, which was after the alleged leakages since 2017, so also after the advertisement for the recruitment on the post of Assistant Engineer (Civil) was issued. It is also clear from the Inquiry Report that the Respondent was not involved in the paper setting procedure for the Mains Examination. There is no evidence to prove that the Respondent had the sole responsibility to consider all these issues and consider bringing changes in the guidelines. In our view, this charge is

completely vague and the material brought before us does not evince any misbehaviour on the part of the Respondent since it is unclear how any irregularity in previously conducted recruitment processes can be attributed to the Respondent, who joined in the year 2021, which would prove that her conduct would fall within the contours of 'misbehaviour'.

As regards Charge No. III and V

60. Charge No. III relates to the responsibility of the APPSC to take remedial action by bringing relevant changes in the examination guidelines to avoid the leakage of the Mains Examination and Charge No. V relates to the allegation of not finalizing the draft 'Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines - 2022' (hereinafter referred to as "2022 Guidelines"). It is implied in the Charge No. V as framed that it was the duty of the Chairman and the Members of the APPSC to bring about change in the guidelines, and that such change if carried out timely, could have prevented the leakage of the question paper for the Mains Examination. In this regard, the Respondent has submitted that the draft of the 2022 Guidelines was ready but it could not be brought into effect, as one 'All Arunachal Nyishi Students' Union submitted a 7-point Memorandum to the State Government for resolution of certain issues regarding conduct of examinations by the APPSC and demanded reforms. To address this, the State Government constituted a High-Level Committee headed by Shri Taba Tedir, the then Hon'ble Minister for Education of Arunachal Pradesh. While the Committee was seized of the matter and final report was awaited, in the interregnum, the 2022 Guidelines were kept in abeyance by common consensus of the Chairman and Members of the APPSC on 22.07.2022. Therefore, at the relevant point of time, the new guidelines were pending because of a collective decision of the Commission. In this regard, nothing has been substantiated by the departmental witnesses in their testimony before this Court to prove that there was any deliberate act on the part of the Respondent in preventing the initiation of new guidelines or bringing changes in the policy. It would be a stretch to claim that bringing about new guidelines for the conduct of examinations in the State would be the sole responsibility of the Respondent and that she has failed in her individual official capacity to bring about such guidelines. It would be even more conjectural to claim that the Respondent by her actions actively prevented the Commission from bringing about fresh guidelines and change in the recruitment process. In absence of any evidence in that respect, in our view both the charges are vague in nature, more so, no specific allegation or indictment of any action to be done by the Respondent has been alleged or proved by bringing cogent material before us. Consequently, such allegations without having any cogent material placed on record, the allegations do not come within the contours of misbehaviour of the Respondent. As such, in our view, both the charges are not proved.

As regards Charge No. IV

61. Now coming to Charge No. IV, which relates to the collective responsibility of

the Respondent along with the Chairman and the Members of the APPSC to ensure confidentiality in functioning of the Commission. It is said that Ms. MepungTadarBage being the member allocated the law and judicial work along with all legal matters, it was her exclusive responsibility which she had failed to discharge. In response, the said allegation has been denied by the Respondent, inter-alia stating that she was not involved in any legal matter concerning the conduct of the Mains Examination. During the hearing, we sought clarification from the learned counsel representing APPSC regarding the duty allocated to each member of the commission. He has produced the work assignment order dated 18.08.2021. The said order is relevant, therefore, reproduced as under:-

"Arunachal Pradesh

Public Service Commission

ITANAGAR

-R(A)/23/2017

Dated Itanagar, the 18th August 2021

ORDER

Consequent upon appointment and joining of Ms. MepungTadarBage as Hon'ble Member, APPSC on 13thAugust, 2021, the earlier order even no. and dated 9th June, 2021 stands modified.

Hence, for better supervision and timely monitoring of recruitment related activities of the Commission, the following distribution of works is ordered with immediate effect:

1. Shri TseringNaksang, Hon'ble Member-I

(i) A.P. Secretariat service matters thereof

(ii) Deptt. of Higher & Technical Education

(iii) Deptt. of Secondary Education

(iv) Deptt. of Elementary Education

(v) Environment & Forests

(vi) Deptt. of Disaster Management

(vii) Rectt. of JE(Civil)/AUPO

(viii) Finance, Planning & Disinvestment

(ix) Power (Electrical/Civil)

(x) Hydropower

(xi) Library

(xii) IPR

2. Major General Ganesh Singh Bisht, VSM (Retd), Hon'ble Member-II

(i) Arunachal Pradesh Public Service Combined Competitive Examination (APPSCCE)

(ii) Tourism

(iii) Tax & Excise

(iv) Department of Home

(v) Information Technology (IT)

(vi) Annual Reports of APPSC

(vii) Audit & Pension

(viii) Textile & Handicraft

(ix) Youth Affairs & Sports

(x) Agriculture

(xi) Horticulture

(xii) AH & Veterinary

3. Major General Jarken Gamlin, AVSM, SM, VSM (Retd.), Hon'ble Member-III

(i) RD & Panchayati Raj

(ii) Accounts & Treasuries

(iii) RWD

(iv) Asstt. Engineer (Civil)

(v) Political Department

(vi) TomoRiba Institute of Health & Medical Science (TRIHMS)

(vii) Administrative Training Institute (ATI)

(viii) DPC

(ix) Periodic weeding of records & management.

(x) Fishery

(xi) Transport & Civil Aviation

4. Ms. Mepung Tadar Bage, Hon'ble Member-IV

(i) Law & Judicial

(ii) Social Welfare, Women & Child Development

- (iii) Health & Family Welfare
- (iv) State Election Commission
- (v) Right to information Act, 2005
- (vi) State Chief Election Office
- (vii) State Election Commission
- (viii) State Legislative Assembly
- (ix) All legal matters including (PILs).
- (x) Art & Cultural Affairs
- (xi) Food & Civil Supply
- (xii) Social Justice, Empowerment & Tribal Affairs

Any matter/subject/Department not specifically allotted to any members shall be submitted to the Chairman. All files shall be routed through the concerned Hon'ble Members before submission to the Chairman.

Sd/- NipoNabam

Chairman

APPSC

Memo No. PSC-R(A)/23/2017

Dated Itanagar, the 18th August, 2021."

62. Upon reading the work allotment order reproduced above, it is clear that it was issued by the Chairman after appointment of the Respondent for better supervision and timely monitoring of recruitment activities of the Commission. The matter relating to the recruitment of Assistant Engineer (Civil) was assigned to MajorGeneral JarkenGamlin, AVSM, SM, VSM (Retd.), Hon'ble Member- III of the APPSC and Ms. MepungTadarBage was assigned the work relating to 'Law & Judicial' and 'All legal matters including (PIL)', among other responsibilities. When learned counsel for the APPSC was further asked to show how the Respondent being in charge of legal matters was exclusively responsible for revising 2017 Guidelines, in reply, nothing was placed on record to prove the said allegation. In fact, by an additional affidavit dated 17.03.2025, it has been admitted by the APPSC that firstly, there is no document or order which clarifies the specific nature of duties to be discharged by a member of the Commission; secondly, no member of the Commission was solely or exclusively assigned the task of revising the 2017 Guidelines. Hence, it cannot be said that the Respondent was assigned any work of the Commission to be performed by her and because of not discharging the work to bring the new guidelines, she failed to perform her duty, for which she may be held liable for an act of misbehaviour.

It was also stated by the APPSC that the Respondent's individual failure has resulted in an institutional failure as there was a collective duty of the APPSC to ensure security and confidentiality. Nothing has been brought on record to support this argument even during hearing. Simultaneously, failure in discharge of individual duties by the Respondent has also not been proved and such being the case, attributing the institutional failure in bringing about reforms in examination process and to initiate the new guidelines to her solely appears to be speculative and untenable.

63. Learned Attorney General for India has made a valiant attempt to persuade us that there are certain common functions of a Public Service Commission which have to be performed by every member of that Commission to ensure a fair, transparent and smooth functioning and the Court must look at the charges framed in the Presidential Reference and assess whether the intention was to address the individual dereliction of duty or collective dereliction by the Commission. He argues that Article 317(1) of the Constitution of India encompasses misbehaviour on an institutional level as well, where a Public Service Commission may be responsible collectively in failing to discharge its duties and thereby guilty of misbehaviour. It was also submitted by the learned Attorney General for India that the report of the Inquiry Committee looked at the incident as another episode of leakage in terms of collective duties of APPSC. We have given due consideration to the submissions made by the learned Attorney General for India, and we find it difficult to agree with him. As discussed above, a bare reading of Article 317(1) of the Constitution would indicate that removal on the ground of misbehaviour is individual and not collective in nature.

Collective Responsibility

64. Article 317 of the Constitution of India does not envisage the principle of Collective Responsibility, unlike some other provisions of the Constitution of India. Yet, we find it imperative to reproduce excerpts from judicial precedents on Collective Responsibility at this juncture in order to describe their inapplicability to the instant matter. The jurisprudence is expounded by this Court is discussed in the following paragraphs.

65. In the case of *Common Cause v. Union of India*, (1999) 6 SCC 667, the concept of collective responsibility was elaborately discussed in the following words: -

"31. The concept of "collective responsibility" is essentially a political concept. The country is governed by the party in power on the basis of the policies adopted and laid down by it in the Cabinet meeting. "Collective responsibility" has two meanings: the first meaning which can legitimately be ascribed to it is that all members of a Government are unanimous in support of its policies and would exhibit that unanimity on public occasions although while formulating the policies, they might have expressed a different view in the meeting of the Cabinet. The other meaning is that Ministers, who had an opportunity to speak for

or against the policies in the Cabinet are thereby personally and morally responsible for its success and failure.

32. In the British Constitution & Politics, 5th Edn. by J. Harvey and L. Bather, it is said as under:

"Except when a Minister explains the reasons for his resignation, Parliament hears nothing of the Cabinet's current deliberations. These remain secret, and only decisions as a whole are reported to the House when policy is announced. Any leakage of divergent views held by Ministers would, as during Queen Victoria's reign, seriously weaken the Government. In its decisions, 'the Cabinet is a unity to the House'. While a Minister can speak against any proposal in a Cabinet meeting, he must either support the policy decided upon or resign. Recent resignations of this nature are Frank Cousins (Prices and Incomes Bill, 1966) and Lord Longford (Education Cuts, 1968). But such resignations are infrequent. Ministers come from the same party and, at least initially, are fairly homogeneous in their political views. In any case, a former Minister is unlikely to cross the floor of the House and join the opposition. His disagreement with the Government is usually over only one issue, and his basic political outlook remains unchanged.

Thus, the Cabinet stands or falls together. Where the policy of a particular Minister is under attack, it is the Government as a whole which is being attacked. Thus, the defeat of a Minister on any major issue represents a defeat for the Government. However, today, unlike the nineteenth century, such defeats do not occur. The use of rigid party discipline ensures that the Government can always obtain a majority vote. Nevertheless, criticism may be so severe and widespread that the Government may modify its policy. If the Minister identified with it feels that his prestige with the party has been badly damaged, he may resign, e.g. Sir Samuel Hoare (1935) over the proposals to partition Abyssinia.

In practice, therefore, all that collective responsibility means today is that every member of the Government must be prepared to support all Cabinet decisions both inside and outside the House."

It is further provided as under:

"The doctrine of collective responsibility has practical advantages. First, it counteracts departmental separation for each Minister has to be concerned with policies of other departments. Second, it prevents the policy of one department being determined unilaterally. Since it is the Cabinet as a whole which decides, Ministers are less likely to be overinfluenced by their civil servants. Third, it ensures that Cabinet decisions are based on principles and not on personalities.

Collective responsibility does not apply to a Minister's responsibility for his permanent officials or for his personal mistakes."

33. In this connection, an extract from The British Cabinet by John P. Mackintosh, 1962 Edn., is set out below as it is also extremely relevant for this case:

"Much has been said and written about the responsibility of Ministers. The discussion can easily become confused because of the different meanings that are attached to the word 'responsible'. Collective responsibility will be discussed below, and the first task is to consider whether there is any separate element of individual responsibility. The most common political meaning is that a certain Minister will answer parliamentary questions on a given subject. A second sense arises when those in political circles appreciate that a particular policy is largely the idea of the Minister, rather than the traditional policy of the party in power, and they may single out the Minister for attack. For instance, in 1903-05 Wyndham was pursuing his land purchase schemes for Ireland in a manner which alarmed many conservatives and would certainly have been unlikely under any other Chief Secretary. A third sense is simply that a Minister is responsible even if a policy is the work of the Cabinet as a whole but his colleagues choose to place the burden upon him. Thus, Sir Samuel Hoare thought he was acting in accordance with the views of the Ministry in concluding the Hoare-Lavel Pact and his decisions were subsequently endorsed by the Cabinet till opposition became acute. He was then asked to disavow and denounce his actions but preferred 'accepting his responsibility', to resign. There is, in addition, the normal moral sense of the word meaning 'culpable' and a Minister may, like a private individual, feel responsible if he could by greater wisdom or exertion have prevented some unfortunate occurrence.

The one aspect that remains is the alleged obligation on a Minister to resign when he or one of his subordinates has blundered. The origin of this notion is fairly clear. It dates from the 1850s and 1860s when it was reasonable to assume that a Minister could watch over every significant action of his department. Even then, there would have been no need to acknowledge errors in this way but for the power of the House of Commons to move and carry a motion censuring the individual in question without necessarily dislodging the Government."

66. Thereafter, in the case of State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501, this Court gave a comprehensive interpretation to the term Collective Responsibility, which is as follows: -

"318. Collective responsibility is a cornerstone of the Westminster model. Initially developed as a constitutional convention in Britain between 1780 and 1832, it began to appear in textbooks in the 1860s and 1870s. In 1867, Walter Bagehot, in his classic work titled The English Constitution, called the "House of Commons" as "a real choosing body", which decides the path that the nation would follow. The consequence of such a systemic expectation in the British Parliamentary system, Bagehot declared, was that the public can, "through Parliament, turn out an administration which is not doing as it likes, and can put in an administration which will do as it likes". The responsibility of Ministers was set as their liability "to have all their public acts discussed in Parliament". The Cabinet was defined as "a collective body bound together by a common responsibility". Later, Lord Salisbury formulated this common responsibility thus:

"[F]or all that passes in a Cabinet, each Member of it who does not resign is absolutely and irretrievably responsible, and that he has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by one of his colleagues....

It is only on the principle that absolute responsibility is undertaken by every Member of a Cabinet who, after a decision is arrived at, remains a Member of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential conditions of parliamentary responsibility established."

(emphasis supplied)

Ministers were liable to lose their offices, if they failed to retain the confidence of the House of Commons or Parliament.

319. In the 1880s, Dicey in Law of the Constitution, propounded that:

"[It] is now well-established law that the Crown can act only through Ministers and according to certain prescribed forms which absolutely require the cooperation of some Minister, such as a Secretary of State or the Lord Chancellor, who thereby becomes not only morally but legally responsible for the legality of the act in which he takes part. Hence, indirectly but surely, the action of every servant of the Crown, and therefore, in effect of the Crown itself, is brought under the supremacy of the law. Behind parliamentary responsibility lies legal liability, and the acts of Ministers no less than the acts of subordinate officials are made subject to the rule of law."

This fixed the responsibility of the Cabinet for the "general conduct of affairs" of the Government.

320. In the twentieth century, Sir Ivor Jennings conceptualised collective responsibility of a Cabinet Government, thus:

"A Government that cannot make up its mind on a fundamental issue ought not to be the Government and will be so regarded in the constituencies. Its fall may be regarded as imminent."

The conduct of the Cabinet determines the fate of the Government.

321. Collective responsibility of Ministers to Parliament is comprehended in two aspects: (i) collective responsibility of Ministers for the policies of the Government; and (ii) individual responsibility of Ministers for the work of their governments. The idea behind this bifurcation, as explained by Birch, is to hold a Government "continuously accountable for its actions, so that it always faces the possibility that a major mistake may result in a withdrawal of parliamentary support." In the British system, collective responsibility works on basis of certain precepts which define and regulate the existence of Government. Geoffrey Marshall (1989) identifies three strands within the principle:

(i) The confidence principle: A Government can only remain in office for so long

as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote;

(ii) The unanimity principle: All Members of the Government speak and vote together in Parliament, save in situations where the Prime Minister and the Cabinet themselves make an exception such as a free vote or an "agreement to differ"; and

(iii) The confidentiality principle: Unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within the Cabinet and the Government.

323. The doctrine of collective responsibility has evolved as one of the indispensable features of the parliamentary system of Government and reflects the political engagement between Government and Parliament. In a parliamentary democracy, the nuances of the doctrine are political. To maintain the notion of "collegiality and coherence", the Ministers work as a team. In the Australian context, Wanna (2012) postulates that collective responsibility thereby acts as an underflowing current necessary for the survival of a Government:

"... To survive as a Government, Ministries must show they can maintain the confidence of the House, put up a credible front to their political opponents and the media, and as a working Ministry find ways to deal with the business of State, much of which will involve making collective decisions and imposing collegial executive authority."

324. Granville Austin observes that the Framers of India's Constitution conceived that the democratic values of the Constitution would be achieved in "the institutions of direct, responsible Government". The Members of the Constituent Assembly borrowed the Parliamentary-Cabinet form of Government from British constitutional theory and adopted it into our Constitution. Though the Constituent Assembly did not adopt British constitutional conventions in the written form, collective responsibility of the Cabinet was specifically incorporated into India's constitutional framework.

325. There is a direct relationship between the principle of collective responsibility and Government accountability. This relationship is conceptualised in The Oxford Companion to Politics in India:

"[A]ccountability can be defined in terms of outcomes rather than processes of Government.... It also includes the criterion of responsiveness to changes in circumstances that alter citizen needs and abilities....

In other words, accountability refers to the extent to which actual policies and their implementation coincide with a normative ideal in terms of what they ought to be.... In this broad sense, accountability amounts to evaluating the nature of governance itself, in outcome-oriented terms."

326. The Oxford Handbook of the Indian Constitution (2016) adverts to several facets of collective responsibility:

"Collective responsibility has several facets. First, Ministers act as a common unit; Cabinet decisions are binding on all Ministers. Disagreements, if any, may be aired in private. Ministers, however, speak in one voice and stand by one another in Parliament and in public. Those that cannot reconcile themselves with particular Government policies, or are unwilling to defend them in public, must resign. Conversely, decisions of particular Ministers, unless overruled, are decisions of the Government."

The principle has also been considered as a political component which political parties in power invoke to maintain party discipline.

327. Collective responsibility also exists in practice in situations where Ministers have no knowledge of the actions taken by the subordinate officers of their respective departments:

"Governing is a complex affair; hundreds of officials in dozens of departments make many decisions on a daily basis. ... These officials are also part of the executive, and Ministers are responsible for those that serve in their departments. ... Ordinarily, Ministers busy themselves with policy issues; matters of implementation are usually left to officials over whom Ministers command little or no oversight. Yet, when they act, subordinates notionally do so on behalf of Ministers. Ministers, therefore, cannot seek refuge in ignorance. Nor can they absolve themselves by pointing to their officers. Both inside and outside Parliament, they are accountable for their departmental shortcomings."

(emphasis in original)

328. Collective responsibility, as a principle and practice, has been given effect authoritatively in several judgments of this Court. The Constitution Bench of this Court, in *Ram JawayaKapur v. State of Punjab* [*Ram JawayaKapur v. State of Punjab*, AIR 1955 SC 549] , examined the functions of the executive. The Court held that the President is "a formal or constitutional head of the executive" and that the "real executive powers" are vested in the Ministers or the Cabinet : (AIR p. 556, paras 13 & 14)

"13. ... Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. ...

14. ... In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the Members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part".

The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them."

(emphasis supplied)

67. The views of the Founding Fathers of the Constitution are equally pertinent. In the Constituent Assembly Debates, Dr. B.R. Ambedkar spoke thus on collective responsibility: (CAD Vol. 7, pp. 1159-60)

"I want to tell my friend Prof K.T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely, collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that it is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately, singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the Cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers

there can be no collective responsibility."

68. In the present case, the Inquiry Committee's report and the evidence brought before us does not indicate any individual responsibility or fault on the part of the Respondent, the Chairman, or any other APPSC member, much less any collective responsibility. If, on the basis of the material brought, the collective fault of the Commission is prima facie clear, then whether collective responsibility may be invoked can be decided in an appropriate case. However, in the present case, we are not impressed by the argument, as such, it is repelled.

69. In *Ram Ashray Yadav (Dr.)*, Chairman, Bihar Public Service Commission, In R/o (Special Reference No. 1 of 1997) (Supra) and Reference Under Article 317(1) of the Constitution of India, *Chhattisgarh Public Service Commission*, (Reference No. 1 of 2006) (Supra) where the facts are somewhat similar, the Court has clearly held that if the facts and evidence on record do not show that the Chairman or Member of the Public Service Commission was directly responsible for the irregularities alleged in the charges, then the question of them being guilty of misbehaviour under Article 317(1) of the Constitution of India would not arise. The report in *Mehar Singh Saini* (Supra) was in a fact-situation where the members of the Commission as well as the Chairman were under reference and there were various allegations of irregularities, such as favouritism in the selection process, not considering the representations made in this regard to the Commission, and of non-cooperation by the member of the Commission in the investigation. In that context, the Court held that the members of the Commission had a responsibility to prevent the loss of faith of the public in the working of the Commission. In the present case, the facts neither show that the Respondent was solely responsible for revision in 2017 Guidelines or to prevent leakage, nor they show any clear act or omission by the Commission which may suffice to impute responsibility on any of the members or the Chairman for such alleged lapse. As such, it cannot be stated that the APPSC is at fault for the same without having proper evidence on record. Further, the admission made by the APPSC in the additional affidavit shows that no single member was responsible for the revision of 2017 Guidelines. Hence, no case of collective responsibility is made out in the present case.

70. Merely because responsibility was given to the Respondent to look into legal matters, would not make her responsible for every act conducted by the APPSC. While it could be said that it is the bounden duty of each member of a Public Service Commission to maintain utmost sincerity and ethics and to ensure absolute confidentiality in the work of the Commission, in this regard, nothing is on record to show that specifically it is the Respondent who has failed in the discharge of her duty by not ensuring the confidentiality. As a member of the APPSC, the Respondent was responsible for the work of the Commission and its duties coextensive with the Chairman and other Members, but she cannot be held liable in her individual capacity by carrying the weight of the entire Commission's responsibilities exclusively.

71. In the statement of the departmental witnesses also, nothing specific has been stated from which a conclusion may be drawn that the Respondent was assigned some specific duties and because of her act or omission she failed to discharge those duties, which would make her guilty of 'misbehaviour'. As such the ChargeNo. IV is also not proved.

As regards Charge No. VI

72. Charge No. VI relates to the decision of the APPSC to keep in abeyance its own orders related to punishment awarded to candidates found using unfair means and duty of Respondent to advise APPSC against such abeyance. It posits that it was the duty of Ms. MepungTadarBage to advise against passing such an order of abeyance. In response, the Respondent has specifically said that the APPSC had taken a decision to impose a three-year ban on candidates found to have been engaging in unfair practices. However, on the receipt of several representations from the AllNyishi Students' Union to take a lenient view, the Secretary of the APPSC was directed to collect detailed information regarding the practices adopted in other State Public Service Commissions and the Union Public Service Commission as there were no guidelines in this regard available in the APPSC. In the absence of clear guidelines in this regard and since there was no quantum of punishment prescribed, and for want of collection of information, the decision was taken by the APPSC on 06.06.2022 to keep the punishment orders in abeyance.

73. In our view, passing an order by the Commission to keep the punishment in abeyance is a discharge of quasi-judicial function of the Commission. Even a wrong decision taken bona-fide by the Commission in discharge of quasi-judicial function would not in any manner fall within the definition of 'misbehaviour'. In respect of any collective decision of the Commission, the act of the Respondent not advising individually in a particular manner contrary to the said decision would not be termed even a lapse on her part.

74. In addition to the aforesaid, it is necessary to say that after the leakage of the question paper for Mains Examination came to light, the State made a reference to the Inquiry Committee. The Chairman and fellow members of the APPSC submitted their resignation on moral ground and for other reasons. Later, MajorGeneral JarkenGamlin, AVSM, SM, VSM (Retd.) was sworn in as State Chief Information Commissioner of Arunachal Pradesh and Mr. TseringNaksang was appointed as Chairperson of the Arunachal Pradesh Private Educational Institutions Regulatory Commission. If the members of the APPSC who were allegedly collectively found involved in the paper leak as per the letter of Chief Minister, later resigned and got assignment of new post by the State, it is a question to ponder upon, which ought to be looked into by the State especially so when Article 319(d) of the Constitution of India bars members of a State Public Service Commission from taking up any other employment either under the Government of India or under the Government of a State after they cease to be in office. In our view, if the members were collectively involved, the act of the

State Government bequeathing responsibility upon such members, giving them assignment of posts having responsibilities, clearly goes to indicate that there was nothing against the Chairman or any Member of the Commission showing their indictment in a personal capacity of committing any act or omission which may prove misbehaviour on their part. In our view, the act of the State requesting the Hon'ble President of India to initiate the removal of the Respondent is arbitrary, unfair and discriminatory.

75. In view of the above, on taking a holistic approach to the charges framed in the present reference and having gone through the voluminous record and evidence which has been brought before us, juxtaposed against the body of judicial precedent in the form of previous reports under Article 317 of the Constitution of India which guide our decision-making in the present reference, it is difficult to see how the allegation of 'misbehaviour' on the part of the Respondent has been proved. Indeed, it is true that the members of the Public Service Commission must be put to higher standards and their conduct must be unimpeachable, but where the consequence of our fact-finding inquiry would be the removal of the Chairman / Member from a constitutional office, we must be abundantly cautioned and tread carefully. In the present case, after appreciation of evidence, we can see that from the very inception, from the report of the Inquiry Committee, no specific allegation against the Respondent qua any of the six charges was levelled. Chapter 7 of this report, which forms the very basis of the present reference, merely makes some suggestions for improvement in the functioning of the APPSC and to adopt best practices. But it makes no adverse comment or personal indictment against the Respondent. The intent of Article 317 of the Constitution of India was to give a higher degree of protection to the members of the Public Service Commission by eliminating political or any pressure otherwise. In the present case, right from the very beginning, the letter of the Chief Minister to the Governor dated 27.10.2022 states that "The Commission Members, with allegations of tainted selection procedure cannot claim any immunity and should have resigned on their own as was done by the Chairman APPSC". Likewise, the letter of the Hon'ble Governor to the Hon'ble President of India dated 02.12.2022 states that the Respondent being the last remaining member (others having tendered resignation) must be removed and fresh Commission must be instituted to restore trust in the Commission. Both the above letters impute responsibility for the leakage of the question paper for the Mains Examination upon the members of the Commission even though there was no such finding in the Inquiry Report. In our opinion, these letters further make it clear that the State dealt with the matter with a prejudice that the Members of the Commission were responsible for the paper leakage without sufficient material or evidence to reach such a conclusion. These letters were toned in a manner that it was absolutely imperative for the Members to resign and to constitute a new Commission for resolving the issues of confidentiality.

76. The actions alleged against the Respondent do not meet the threshold of 'misbehaviour', rather, they do not even meet the threshold of 'lapse' which has a

lower threshold. It is not a case where the Respondent was unable to maintain the standard of conduct expected of a Member of a Commission and her actions alone brought disrepute to the APPSC. No overt act by her has been shown to meet the threshold of misbehaviour. As per the charges framed, it has been argued before us that the Respondent, in the discharge of her official duty failed to steer the Commission in a particular direction, be it towards framing of new guidelines or not advising against keeping in abeyance the punishment to those involved in unfair means. We find this allegation to be wholly conjectural and liable to be rejected outright because the Respondent could not be held responsible to ensure that good sense prevailed in the Commission of which she was a member. If the Commission by application of its collective mind makes certain decisions, how far is it justified to single out a member who has simply carried out her official duties when the decisions eventually turn out to be wrong ones. To conclude that the Respondent is liable for any of the allegations against her, it must be shown first that she had a duty which she failed to discharge or fulfil.

77. When there is no evidence linking the present Respondent to the leakage of the question paper of the Mains Examination, summarily holding her responsible and seeking to remove her from office on the pretext of not maintaining confidentiality in the work of the Commission, it would further erode the roots of the Constitutional intent of Article 317 to protect the Members of the Public Service Commission from political pressure. It cannot be lost sight of the fact that as per the allegations, the working of the Commission is alleged to have been marred with irregularities from as far back as in 2017. Admittedly, the APPSC exemplified institutional lethargy in bringing about new guidelines for conduct of examination, but the Respondent joined the Commission as a Member in 2021, and the incident of paper leakage occurred in 2022. She was required, as a member of the Public Service Commission, to be exemplary in her conduct, but she could not have been expected to right all wrongs which had been perpetrated in the APPSC prior to her joining or to single-handedly ensure that new guidelines are framed and the entire examination process is reformed. There is nothing to show that her conduct after joining in the form of any act or omission contributed in any way to bringing disrepute to the APPSC.

78. Therefore, in our view, the reference made by the Hon'ble President of India for the charges as alleged are not based on specific allegations against the Respondent Ms. Mepung Tadar Bage in her individual or official capacity. The allegations which are general in nature, have not even been substantiated by bringing any cogent evidence before us and as such we are of the view that the allegations have not been found proved in the fact-finding enquiry conducted by us in exercise of the powers under Article 145(1)(j) of the Constitution of India read with Order XLIII of the Supreme Court Rules, 2013.

79. As we have found that the charge of misbehaviour has not been proved against the Respondent, the points of determination jointly framed by the parties

are answered accordingly.

80. In view of the foregoing, the inescapable conclusion on the allegations of charges as made in the reference is that the allegations have not been proved. In terms of Order XLIII Rule 5 of the Supreme Court Rules, 2013 and answering the reference under Article 317(1) of the Constitution of India, this report with recommendation shall be sent to the Hon'ble President of India that the charges as alleged do not bring about any act of 'misbehaviour' by Ms. MepungTadarBage for taking action within its contours. We further recommend that her suspension be revoked forthwith and she would be entitled to all consequential and monetary benefits.