
(2016) 08 GUJ CK 0071
In the Gujarat High Court

Case No : Special Civil Application Nos. 10049, 10763, 10764 of 2016 , 10766, 10767, 10768, 11406, 11409, 11411, 11428, 11430, 11434, 11436, 11485, 11487, 11493, 11495 of 2016, 11501, 11503, 11505, 11508, 11511, 11515, 11548, 11550, 11571, 11573 , 11582, 11584, 116

Union of India

APPELLANT

Vs

Kaustubhai Devang Pandya

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Citation : (2016) 08 GUJ CK 0071

Hon'ble Judges : Mr. M.R. Shah and Mr. A.S. Supehia, JJ.

Bench : Division Bench

Advocate : Mr. Anil C. Singh, Additional Solicitor General of India with Mr. Afroz L. Shah, Advocate with Mr. Devang Vyas, Asstt. Solicitor General of India with Mr. Nirzar Desai, Advocate, for the Petitioner; Mr. Bhaskar Tanna, Senior Advocate for Tanna Associates,

Final Decision : Disposed Off

Judgement

Mr. M.R. Shah, J. (CAV) - As common question of law and facts arise in this group of petitions, all these petitions are heard, decided and disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned respective judgment and orders passed by the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as "learned Tribunal") in respective original applications, the particulars of which are as under and by which the learned Tribunal has quashed and set aside the decision vide letter bearing No.A34013/05/2014DE (Chapter-II) dated 11.12.2015 by which the Director General informed the Chief Postmaster General, Gujarat Circle that the competent authority has ordered to cancel the P.A./S.A. Direct Recruitment Examination 201314 and also quashed and set aside the consequential orders dated 11.12.2015/23.12.2015 by which the result of the examination for direct

recruitment of P.A./S.A. for the year 201314 came to be canceled and also by which the orders dated 23.12.2015 by which the service of the respective applicants were terminated, the original opponents ? Chief Postmaster General and others have preferred the present Special Civil Applications.

The particulars of respective original applications against which the present Special Civil Applications are preferred, are as under:

Sr.No.

OA No.

SCA No.

Name

1.

478/2015

10049/2016

K.D. Pandya & Others

2.

23/2016

10763/2016

U.R. Singh & Others

3.

491/2015

10764/2016

P.D. Vora

4.

6/2016

10766/2016

M.G. Jadav

5.

487/2015

10767/2016

B.C. Gohil

6.

5/2016

10768/2016

A.U. Chauhan & Others

7.

264/2016

11406/2016

Sunil Kumar Suman

8.

278/2016

11407/2016

Sunny Kumar

9.

142/2016

11408/2016

Sanjaykumar C. Makwana

10.

186/2016

11409/2016

Sunil C. Vishnoi

11.

227/2016

11411/2016

Vikar Kumavat

12.

192/2016

11412/2016

Sonu Ramsukh

13.

224/2016

11413/2016

Amit S. Sharma

14.

247/2016

11414/2016

Sindhi Azimkhan Jummakhan

15.

153/2016

11415/2016

Mayurkumar N Rathva

16.

174/2016

11416/2016

Kiran Ram Chandiramani

17.

195/2016

11417/2016

Rakesh B. Chahar

18.

155/2016

11418/2016

Jaykumar M Barot

19.

263/2016

11419/2016

Dinesh Om Prakash Meena

20.

152/2016

11420/2016

Allarakha S. Shaikh

21.

255/2016

11421/2016

Pradeep Kumar Dave

22.

200/2016

11422/2016

Hanuman Prasad Meena

23.

295/2016

11423/2016

Brijeshbhai Prakashbhai Choudhary

24.

215/2016

11424/2016

Milin Rathod

25.

231/2016

11425/2016

Sumeet Kumar

26.

490/2016

11426/2016

J.B. Patel

27.

218/2016

11427/2016

Jatin Nagla

28.

228/2016

11428/2016

Dipak Kumar R. Indave

29.

261/2016

11430/2016

Mansuri Mahmad Anas Mahmad Salim

30.

276/2016

11431/2016

Hitenkumar R. Lakhani

31.

133/2016

11432/2016

Jitendra Kumar

32.

226/2016

11433/2016

Rameshchand Meena

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202/2016

11434/2016

Samirkhan G. Malek

34.

244/2016

11436/2016

Piyush R. Dobariya

35.

300/2016

11437/2016

Nileshkumar

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219/2016

11438/2016

Sushilkumar R. Choudhary

37.

209/2016

11439/2016

Sarvan Kumar Suthar

38.

223/2016

11440/2016

Shital Parijat

39.

212/2016

11441/2016

Jaykumar J. Parmar

40.

249/2016

11442/2016

Leela Ram Saini

41.

234/2016

11443/2016

Kamar Tabrej

42.

146/2016

11444/2016

Adesara Paras Pradipbhai

43.

179/2016

11445/2016

Angel Eldrini Peters

44.

196/2016

11446/2016

Hemangibahen R. Patel

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220/2016

11447/2016

Pushpendra Yadav

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206/2016

11448/2016

Mitul A Barot

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205/2016

11449/2016

Nitin Kodyakar

48.

298/2016

11450/2016

Dhaval Jayantilal Panchal

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134/2016

11451/2016

Manisha Mahendra Sharma

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225/2016

11452/2016

Krishnakumar L. Jetavat

51.

183/2016

11453/2016

Piyushkumar Gamubhai Prajapati

52.

113/2016

11454/2016

Shubhangi Dineshbhai Dave

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188/2016

11455/2016

Darshan M. Vora

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296/2016

11456/2016

Bharat Bhushan Singh

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229/2016

11457/2016

Harsh M. Pavra

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232/2016

11458/2016

Anil G. Bhojwani

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240/2016

11459/2016

Ashutosh D. Jha

58.

208/2016

11460/2016

Sweety S. Chandrana

59.

128/2016

11461/2016

Dilipkumar S. Varma

60.

150/2016

11462/2016

Kamal Meena

61.

262/2016

11463/2016

Manoj Kumar Upendra Singh

62.

198/2016

11464/2016

Mehulkumar R. Bhundiya

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181/2016

11465/2016

Chandan Singh Verma

64.

139/2016

11466/2016

Vikaskumar I. Chaudhary

65.

265/2016

11467/2016

Jasvixinh Prakashsing Gohil

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149/2016

11468/2016

Remya Vikraman

67.

221/2016

11469/2016

Kuldeep Singh P. Solanki

68.

230/2016

11470/2016

Preeti Rathi

69.

147/2016

11471/2016

Sandhya S. Kothari

70.

277/2016

11472/2016

Anurag Singh

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176/2016

11473/2016

Hardik M. Rathod

72.

118/2016

11474/2016

Naresh Kumar Meena

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173/2016

11475/2016

Yugal Yadav

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193/2016

11476/2016

Brij P. Bhatt

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11477/2016

Vikash Kumar Meena

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130/2016

11478/2016

Ajaj A. Rajpura

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180/2016

11479/2016

Utsav J. Solanki

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116/2016

11480/2016

Mayankkumar R. Prajapati

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190/2016

11481/2016

Nimish M. Prajapati

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11482/2016

Swati C. Gadhewal

81.

199/2016

11483/2016

Atulkumar B. Solanki

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132/2016

11484/2016

Meena Khushbu Banwarilal

83.

156/2016

11485/2016

Vijay J. Godhwani

84.

141/2016

11486/2016

Yogesh Meena

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257/2016

11487/2016

Jaydeep Vallabhbhai Devaliya

86.

185/2016

11488/2016

Ratnu Kapil Bhavanidan

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291/2016

11490/2016

Suman Saurav

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245/2016

11491/2016

Ruchi Gopal Tiwari

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189/2016

11492/2016

Balram Ramsukh

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253/2016

11493/2016

Mihirkumar Bipinbhai Joshi

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117/2016

11495/2016

Sanket M. Halani

92.

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11496/2016

Nikhilkumar G. Makwana

93.

144/2016

11497/2016

Rekha Ram

94.

175/2016

11498/2016

Ankit R. Pancholi

95.

248/2016

11499/2016

Kiritkumar Savjibhai Ghodasara

96.

280/2016

11500/2016

Avinash Kumar

97.

283/2016

11501/2016

Arya Ashishkumar Dhairyakumar

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203/2016

11503/2016

Jayraj Sinh M Vaghela

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207/2016

11504/2016

Rutul M Vaghela

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287/2016

11505/2016

Rajendra Prasad

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182/2016

11515/2016

Ajaykumar Sureshbhai Patel

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102/2016

11516/2016

Kelvin Eliyazar Christian

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250/2016

11517/2016

Shrikant Sharma

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191/2016

11518/2016

Anupkumar G. Patel

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266/2016

11519/2016

Sunil Shewani

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172/2016

11520/2016

Hiren K. Varmora

107.

129/2016

11521/2016

Jigisaben L. Solanki

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222/2016

11532/2016

Kishan R. Dave

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284/2016

11533/2016

Rahul Kumar

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11534/2016

Priti S. Raval

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137/2016

11535/2016

Jalpa K. Parmar

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267/2016

11536/2016

Sunil Kumar Meena

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122/2016

11537/2016

Atul Rajendraprasad Yadav

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243/2016

11538/2016

Dharmendra Singh

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11584/2016

Dev Ankit Ravindrabhai

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11585/2016

Ankit Kumavat

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106/2016

11586/2016

Sudesh Suresh

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184/2016

11587/2016

Hemaben K. Gadhvi

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145/2016

11588/2016

Hirenkumar M. Patel

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11589/2016

Piyushbhai Ishwarbhai Gamit

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11590/2016

Bhatiya Gaurav Vinodbhai

122.

201/2016

11591/2016

Prashantkumar B. Pandya

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260/2016

11592/2016

Pramod Kumar

124.

297/2016

11593/2016

Pooja Verma

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111/2016

11594/2016

Pawan Kumar

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270/2016

11595/2016

Sintu Kumar Jaiswal

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105/2016

11596/2016

Sudhirkumar M. Patel

128.

211/2016

11597/2016

Sonalbahen M. Prajapati

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286/2016

11598/2016

Ravi Rameshchandra Varma

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299/2016

11599/2016

Dhirendrakumar Chandrakumar Mishra

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11600/2016

Ishan Daxeshbhai Dave

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268/2016

11601/2016

Parth Anilbhai Patel

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214/2016

11602/2016

Kanhaiyalal Jaiswal

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242/2016

11603/2016

Raval Hardik Dilipkumar

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281/2016

11604/2016

Zahabiya Oan Painter

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11605/2016

Ankitkumar Naveenbhai Patel

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301/2016

11606/2016

Dinbandhu Gupta

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11607/2016

Manojkumar Vijay Singh

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177/2016

11608/2016

Ravinder

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11609/2016

Satish Kumar

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120/2016

11610/2016

Kaushal J. Pancholi

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11612/2016

Ashok B. Panchotiya

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187/2016

11614/2016

Paras Kumar Yadav

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11615/2016

Abhiyash Kumar

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11616/2016

Aditya Kumar

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11617/2016

Hardik Bharatbhai Zala

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11618/2016

Dhramveer Kumar

148.

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11642/2016

Vijendra Kumar

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11643/2016

Jaydeep D. Rao

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11644/2016

Avinash Kumar

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11645/2016

Nitinkumar Jerambhai Gabu

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288/2016

11646/2016

Pappu Ramchandra Yadav

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246/2016

11647/2016

Vrashbhanu Gour

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11648/2016

Sanjay Kumar

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11649/2016

Rajesh Kumar Meena

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11650/2016

Neha Chattar

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11651/2016

Ravindrakumar Hargovindbhai Desai

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11652/2016

Sagar Pankaj Mahesh

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11653/2016

Madhulika

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11654/2016

Parmjeet

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11655/2016

Mayurkumar S. Mesariya

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11656/2016

Hiralben B. Dave

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11657/2016

Digraj Kiritkumar Leuva

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11658/2016

Gohil Sanjeev Yogendra

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11659/2016

Suraj Singh

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11660/2016

Viral Narendrabhai Chotai

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11661/2016

Ronakkumar D. Parmar

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285/2016

11662/2016

Kundan Kumar

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11663/2016

Bhavik H. Jadeja

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11664/2016

Raja Pandey

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11665/2016

Saumil M. Modi

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216/2016

11666/2016

Parth M. Bhatt

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11669/2016

Vikashkumar N. Solanki

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107/2016

11670/2016

Krunalkumar K. Patel

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210/2016

11671/2016

Hitesh V. Raa

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11674/2016

Keyur Tulsibhai Priyankar

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11675/2016

Kundan R. Mahto

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11676/2016

Rajul J. Choudhary

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11677/2016

Ramswaroop Mangava

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11678/2016

Abhishek Kumar

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11679/2016

Prem Kumar Mishra

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103/2016

11680/2016

Bhavin Jayantbhai Prajapati

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100/2016

11682/2016

Jadav Ajitsang Banesang

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348/2016

11508/2016

Rohit D. Raj

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337/2016

11509/2016

Axita V. Chotaliya

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11510/2016

Naharsingh Meena

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51/2016

11511/2016

Monu Tomar

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46/2016

11522/2016

Vijay Singh

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94/2016

11523/2016

Ashwinbhai H. Kevat

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60/2016

11524/2016

Amit Kumar

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74/2016

11525/2016

Sanjeev Kumar

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64/2016

11526/2016

Sunil Soni

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75/2016

11527/2016

Bharat Bhushan

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85/2016

11528/2016

Mahipal Narendra Chaudhary

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11529/2016

Vivek Kumar

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315/2016

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Priyanshu R.

14.

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11531/2016

Jigneshbhai M Chaudhari

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11539/2016

Ajaydeepsingh Shivrajsingh Solanki

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11541/2016

Ajit Kumar

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11542/2016

Vikas Raj

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11543/2016

Heera Lal Meena

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11544/2016

Jairam Yadav

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11545/2016

Nawalkishor Sharma

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11546/2016

Rashmi Kumar Ojha

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159/2016

11547/2016

Ravi Kumar

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11548/2016

Deepak Kumar

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164/2016

11550/2016

Ramesh Kumar Yadav

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44/2016

11551/2016

Anilkumar S. Luvar

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11552/2016

Jashwant Singh Meena

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Dimpal L. Bhjojak

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Shyam Sundar Kumar

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Mukhraj Meena

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11556/2016

Sukesh Kumar Singh

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11557/2016

Piyush Joshi

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11558/2016

Ravi Chaudhary

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Manishkumar Rathi

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Ajit Kumar

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11561/2016

Rahul Rajan

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Dev Kumar

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Suman Prakash

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11564/2016

Vikas Kumar

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11565/2016

Kamlesh Kumar Meena

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Gopal Kumar

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Saurav Kumar

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Dharmwir Kumar

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Narendra Arvind Kumar

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11570/2016

Saurav Kumar

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310/2016

11571/2016

Harlal Meena

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11573/2016

Sanjaykumar L. Purohit

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11574/2016

Prakash Ranjan

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81/2016

11575/2016

Vikash Kumar

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11576/2016

Samir Anilkumar

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11577/2016

Sanjeev Kumar Bharti

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87/2016

11578/2016

Rana Pratap

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11579/2016

Anup Kumar

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11580/2016

Abhishek Shukla

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161/2016

11581/2016

Dinesh Chand Meena

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99/2016

11582/2016

Manish Kumar

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271/2016

11611/2016

Kamlesh Prasad

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84/2016

11619/2016

Nishant Bharti

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96/2016

11620/2016

Karodi Lal Meena

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163/2016

11621/2016

Rajendra Kumar Meena

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98/2016

11622/2016

Om Prakash Kumar

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11623/2016

Abhishek Kumar

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11624/2016

Anoop Singh

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157/2016

11625/2016

Rajiv R. Prasad

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86/2016

11626/2016

Yashwant Kumar

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11627/2016

Vipin

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89/2016

11628/2016

Monalal Meena

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11629/2016

Nitish Kumar

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Alok Priyadarshi

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11631/2016

Awadhesh Prasad

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11632/2016

Rajkumar Swarnkar

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167/2016

11633/2016

Kailash Mahanto

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171/2016

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Rajaram Meena

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11635/2016

Chandan Kumar Mistri

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11636/2016

Krishnakumar Sagar

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11637/2016

Rahul Verma

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Rakesh Kumar Meena

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11639/2016

Sanjay Kumar

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169/2016

11640/2016

Rajveer Sinh

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Radhe Shyam Kumar

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11667/2016

Nirajkumar U.

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170/2016

11668/2016

Vikas A. Singh

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Arpit B. Patel

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11673/2016

Rupa S. Mori

3. Facts leading to the present Special Civil Applications in nutshell are as under:

3.1 That in the year 2011 the Department of Posts introduced a new examination system for Postal Assistant, Sorting Assistant, direct recruitment and other departmental examinations by outsourcing to M/s. CMC Limited on turnkey basis. That the Minister of Communications and Information Technology framed the Ministry of Communications and Information Technology, Department of Posts, Circle and Regional offices, Postal Assistant Group "C" Post Recruitment Rules, 2014 (hereinafter referred to as "Rules, 2014") for the method of recruitment to the post of Postal Assistant, Group "C" at circle of Regional offices. These Rules

provided (1) that the period of probation of selected candidates will be for two years; (2) 75% will be filled by direct recruitment and 25% by promotion through Limited Departmental Competitive Examination; (3) Examinations for direct recruitment shall be governed by the instructions issued by the Department of Posts regarding the shortlisting criteria of the applicants, syllabus and pattern of test etc. from time to time.

3.2 That the notification dated 21.02.2014 came to be issued by the Department of Posts (Recruitment Division) inter alia providing for the following:

- (i) Educational qualification of 10+2 or 12th class from a recognised university with English as compulsory subject.
- (ii) The candidates were subjected to aptitude test (Paper I) and computer typing test (Paper II)
- (iii) Candidates were to be allotted to the posts and division as per their preference based on their position in the merit list.
- (iv) The application registered online will be treated as provisional and it will be subject to verification of certificates/documents.
- (v) Any false/incorrect information found/detected at any stage, his/her candidature/appointment will be summarily rejected and terminated.

3.3 That by a notification dated 21.02.2014 the respondents invited the applications from eligible candidates for filling up large number of vacancies for Postal Assistant and Sorting Assistant. The method of recruitment to the post of Postal Assistant/Sorting Assistant is governed by Rules, 2014, which was published in the official gazette on 27.01.2014. As observed herein above, by order dated 05.04.2011, the competent authority decided to adopt a new system for objective type questions for all examination and a decision was taken to conduct the examination centrally by the Postal Directorate. M/s. CMC Limited was selected to undertake the recruitment process from the year 2011. M/s. CMC Limited was required to handle the entire process of conducting the examination from the stage of printing the application form till preparation of merit lists. The Postal Department was required to announce the results on the basis of merit lists provided by M/s. CMC Limited and candidates were required to send the filled in (OMR) application forms directly to M/s. CMC Limited.

3.4 The role and responsibilities of M/s. CMC Limited in the examination were as under:

- (i) Designing of Recruitment Module and hosting of the same in India post Website in consultation with PTC, Mysore.
- (ii) Designing, Printing, Packing and supply of OMR Application Form Kits to Nodal officer of Postal Circles.
- (iii) Capturing of Data/Information from the application forms received at

designated address in Delhi.

- (iv) Applicants database handling and generation of various reports.
- (v) Generation and dispatch of Admit cards by CMC to candidates.
- (vi) Designing, Printing, Packaging, Dispatch and Collection of the OMR Answer Sheets.
- (vii) Packaging, Dispatch and Collection of Test booklets.
- (viii) Arrangement of examination venues and conduct of each examination on the same date and time throughout the country.
- (ix) Scanning of OMR answer sheets and preparation of merit list as per the guidelines of Department of Posts.

3.5 That as per the notification dated 21.02.2014, an eligible candidate can apply for any one of the Circles. A total number of 564 vacancies were notified for Gujarat Circle. The eligible candidates who have fulfilled the eligibility criteria as per the Rules, 2014, responded to the said notification dated 21.02.2014 by submitting their respective applications seeking selection and appointment to the post of Postal Assistant/Sorting Assistant in Gujarat Circle. That the written examination was conducted on 01.06.2014 by engaging the services of M/s. CMC Limited. The examination comprised of two parts viz. (1) Paper-I was Aptitude Test whereas Paper-II was computer/typing test. The candidates who were qualified in the Aptitude Test (Paper-I) were directed to take part in computer/typing test (Paper-II) in terms of the instructions contained in Para 11.1 of the notification dated 21.02.2014. The computer/typing test was also conducted by the said M/s. CMC Limited. That so far as the Gujarat Circle is concerned, the examination for direct recruitment was held by M/s. CMC Limited at Ahmedabad, Rajkot and Vadodara centres. Similar examinations were also conducted by M/s. CMC Limited for other circles viz. Chhattisgarh, Haryana, Rajasthan and Uttarakhand. That thereafter a provisional select list was published by the office of the Chief Postmaster General, Gujarat Circle. All the successful applicants were allotted to various divisions as per their respective individual merits. That in Gujarat Circle, out of 652 candidates selected, 290 successful candidates were appointed on probation period of two years and 362 candidates were in the select list but were not appointed and/or were not issued the appointment orders. Similar exercise was conducted with respect to the other circles including Chhattisgarh, Haryana, Rajasthan, Uttarakhand etc.

3.6 It appears that after declaration of the result, there were complaints that malpractices were being adopted by some of the candidates using unfair means in the examination. That the complaint was received by the Postal Directorate on 08/09.04.2015 alleging irregularities in recruitment of P.A./S.A. Direct Recruitment Examination for the year 2014 conducted on 01.06.2014 at different centres in Gujarat Circle. That the said complaint was inquired by a Vigilance Team of the Postal Directorate and it was found that there were good and

sufficient reasons to suspect serious malpractice on the part of some of the candidates and officials of M/s. CMC Limited with or without connivance of outsiders in the conduct of the examination held in Gujarat Circle. It appears that based on the prima facie suspicion on the agency on the leakage of the question paper/answer key and violation of many of the provisions of the Agreement/Instructions of the Department by outsourced agency, possibility of involvement of outsiders, with or without connivance of M/s. CMC Limited, orders were issued for holding in abeyance of further appointments/training in respect of all the 22 postal circles, where the examination was conducted through the same outsourcing agency ? M/s. CMC Limited. Vide order dated 27.04.2015 the Assistant Director General (DE), Ministry of Communication and I.T., Department of Posts addressed a letter to all the Chief Postmaster General except the Chief Postmaster General of Bihar, Delhi, Himachal Pradesh, Madhya Pradesh, Maharashtra and Uttar Pradesh and directed that the appointments of successful candidates of P.A./S.A. Examination for the year 2014, who were not yet issued the letter/order of appointment may immediately be held in abeyance till further orders and no training orders be issued in respect of the candidates in whose cases pre-appointment formalities have been completed. That in the meantime out of the selected candidates, 290 candidates were already given appointment by the Gujarat Circle, however on a probation of two years. It appears that thereafter and after a detailed investigation with regards to the conduct of the examination in respect of other Postal Circles was also undertaken. Since primarily, no vigilance angle was found to have been established in the fair conduct of the P.A./S.A. Examination, in 11 circles viz. Andhra Pradesh, Assam, Jammu and Kashmir, Karnataka, Kerala, Maharashtra, North East, Odisha, Tamil Nadu, West Bengal and Punjab, the competent authority ordered revocation of the orders of holding in abeyance on the further appointment and training. However, the investigation revealed certain irregularities on mass level on the part of many candidates and officials of M/s. CMC Limited strongly suggesting leakage of question papers/answer key of the P.A./S.A. Examination, in 5 circles viz. Rajasthan, Gujarat, Haryana, Uttarakhand and Chhattisgarh. It appears that with respect to other 5 circles viz. Uttar Pradesh, Himachal Pradesh, Delhi, Bihar and Madhya Pradesh where earlier examinations were cancelled due to certain other administrative reasons, the competent authority did not consider to revoke the orders of holding in abeyance of appointment/training orders. Out of the said 5 circles viz. Uttar Pradesh, Himachal Pradesh, Delhi, Bihar and Madhya Pradesh were held by the same agency, whose role in fair conduct of the examination was not under cloud, the competent authority did not consider allowing declaration of the results by the Department. While remaining two Circles, namely, Uttar Pradesh and Bihar Circles were directed to hold the reexamination at their level without involvement of the agency.

3.7 It appears that the investigation revealed serious irregularities/malpractices in the remaining six circles viz. Gujarat, Uttarakhand, Chhattisgarh, Haryana, Rajasthan and Jharkhand on the part of many candidates and the outsourcing

agency. In respect of Jharkhand Circle, subsequent to the examination, the result was not declared and therefore, it was decided to cancel the process of recruitment outright. In respect of the remaining five circles, on the basis of the report of Vigilance investigation established that the malpractices occurred in these circles with a distinct pattern and the examination process was severely and extensively compromised and it was found that there were large scale of malpractices and use of unfair means including impersonation, with the connivance of the outsiders and no exercise could possibly identify with certainty the candidates, who did not use any unfair means or were not privy to the question paper/answer key. The indepth investigation carried out by the Vigilance Division of the Postal Directorate also revealed and found that the examination process has been compromised by the outsourced agency M/s. CMC Limited with the involvement of some other unidentified persons. Therefore, a conscious decision was taken on the investigation reports disclosing large scale malpractice. It was decided that the examination/result of P.A./S.A. be cancelled in five circles viz. Chhattisgarh, Gujarat, Haryana, Rajasthan and Uttarakhand. Accordingly, the results of 201314 P.A./S.A. Direct Recruitment Examination came to be canceled and consequently the services of the selected candidates who were also appointed on probation of two years came to be canceled and they came to be terminated. That cancellation of the result of the consequent action of terminating the services of the candidates who were appointed on probation period of two years gave rise to the respective original applications before the learned Tribunal.

3.8 That the learned Tribunal framed the following questions / points.

- "1. Whether the action taken by the respondents to cancel the examination and the consequential orders of termination of the applicants from services are liable to be quashed on the ground of violation of the rules of natural justice?
2. Whether the circumstances warrant the cancellation of the examination in its entirety?
3. Whether the impugned orders are stigmatic/punitive in nature?
4. Whether the impugned orders of termination call for interference on the ground that the same came to be passed by invoking the provisions of CCS (Temporary Service) Rules, 1965?"

That after hearing the learned advocates appearing for respective parties and considering the material on record more particularly the vigilance report on the basis of which the decision was taken to cancel the results of P.A./S.A. of 201314 examination, the learned Tribunal has answered the question Nos.1 and 2 in affirmative holding that the action taken by the respondents in canceling the examination and the consequential orders of the termination of the applicants from service are in violation of the Rules of natural justice. However, it is required to be noted that the learned Tribunal has also given the finding that circumstances warrant the cancellation of examination in its entirety. The learned

Tribunal has also held that the orders of termination are not stigmatic/punitive in nature. The learned Tribunal has also held that the impugned orders of termination do not call for any interference on the ground that the same came to be passed by invoking the provisions of CCS (Temporary Service) Rules, 1965 (hereinafter referred to as "Rules, 1965"). After holding so mainly and solely on the ground that the action of the Department is in breach of principles of natural justice, by impugned judgment and award the learned Tribunal has set aside the action of the respondents in canceling the result and consequently terminating the services of the respective applicants, however has declined to pass any order of reinstatement. The learned Tribunal has also passed an order that the select list be kept in abeyance. The learned Tribunal has also passed an order directing the petitioners herein ? original respondents to probe into the matter by thorough investigation in a fair and transparent manner to be undertaken either by Vigilance Wing of the Department or any suitable investigating agency. The learned Tribunal has also further observed that depending upon the outcome of the probe the original respondents shall take decision relating to pattern of the select list in light of the decision of the Hon''ble Supreme Court in the case of Inderpreet Singh Kahlon v. State of Punjab reported in (2006)11 SCC 356 and the decision of the Hon''ble Supreme Court in the case of Joginder Pal & Ors. v. State of Punjab & Ors. reported in (2014)6 SCC 644.

3.9 Feeling aggrieved and dissatisfied with the impugned judgment and orders passed by the learned Tribunal, the original respondents ? Department of Posts and others have preferred the present Special Civil Applications under Article 226 of the Constitution of India.

4. Shri Anil Singh, learned Additional Solicitor General has appeared with Shri Afroz L. Shah, learned advocate and Shri Devang Vyas, learned Assistant Solicitor General of India and Shri Nirjar Desai, learned advocate for the petitioners. Shri B.P. Tanna, learned Senior Advocate and Shri M.S. Rao, learned advocate and Shri Ketan D. Shah, learned advocate have appeared on behalf of the respective original applicants.

5. Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department has vehemently submitted that the learned Tribunal has materially erred in quashing and setting aside the action of the Department in canceling the result and the consequential action of terminating the services of the respective original applicants on the ground that the same is in breach of principles of natural justice.

5.1 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that on one hand the learned Tribunal has given the specific finding in favour of the Department with respect to the large scale malpractice and that M/s. CMC Limited committed serious lapses and that it would not be possible for certain candidates to be successful without active involvement of the officials of M/s. CMC Limited. On the other hand the learned Tribunal has set aside the action of the Department in canceling

the entire result and consequent action of terminating the services of the successful candidates on the sole ground that the same is in breach of principles of natural justice.

5.2 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that in the facts and circumstances of the case and the finding recorded by the learned Tribunal more particularly the findings recorded in paras 36 and 37, the learned Tribunal ought not to have held that there is a violation of principles of natural justice.

5.3 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that on one hand the learned Tribunal in para 35 has specifically observed that "we refrain from furnishing all the particulars mentioned in the said complaint received on 09.04.2015." On the other hand the learned Tribunal has held that non-supply of the copy of the investigation / inquiry report submitted by the vigilance division to any of the candidates whose services were terminated and no action oriented notice or opportunity of hearing was given to them proposing cancellation and termination of their services, their action is in breach of principles of natural justice. It is submitted that in the facts and circumstances of the case and considering the findings recorded by the vigilance department, which was perused by the learned Tribunal and having observed and held that there are evidences to suggest that in respect of 34 candidates against whom complaints were received, malpractices have been resorted to in a planned manner and that the report of the vigilance department discloses distributing patterns; incidence of unusual coincidence indicating an unholy network at work also involving some representatives of M/s. CMC Limited. Thereafter, the learned Tribunal has materially erred in holding the action of canceling the result in breach of principles of natural justice.

5.4 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that even the learned Tribunal has specifically observed and held that the impugned orders of termination are not liable to be interfered with on the ground that the same are passed by invoking the provisions of Rules, 1965. It is submitted that once it is so held the learned Tribunal ought not to have quashed and set aside the order of termination more particularly when the respective candidates who were appointed were on probation.

5.5 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in observing that there is violation of principles of natural justice as the Investigators (Vigilance Department) did not take any steps to conduct any of the participants of the examination; did not record their statements and were behind the back of the officials of M/s. CMC Limited.

5.6 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has

materially erred in holding that the action of the Department is in breach of principles of natural justice as the copy of the investigation report was not supplied to any of the candidates whose service was terminated; the service of the applicants could not have been terminated without supplying the copy of the investigation report and without giving an opportunity; the appointed candidates have been denied the right to have notice of the other side's case; the right to bring evidence and the right to argue.

5.7 It is further submitted that the learned Tribunal has materially erred in relying upon the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar v. State of U.P. reported in (2013)16 SCC 771. It is further submitted that the learned Tribunal has not properly appreciated the facts of the case in case of Mahipal Singh Tomar's case. It is submitted that the learned Tribunal has not properly appreciated the distinguishing features of facts in the case of Mahipal Singh Tomar's case and the facts on hand.

5.7.1 It is submitted that the learned Tribunal ought to have appreciated the fact that Mahipal Singh Tomar's case was concerned with large scale irregularities in the placement of selected candidates in different colleges. It is submitted that in the present case the selection process itself is vitiated which may not be compared with the irregularities in the placement of selected candidates. It is submitted that the learned Tribunal has not properly appreciated the fact that the present case is concerned with large scale irregularities and hence, the exception carved out in the Mahipal Singh Tomar's case would be applicable.

5.7.2 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department the record produced in Mahipal Singh Tomar's case did not show the involvement of the candidates in the placement process, however in the present case there is a large scale manipulation by the candidates.

5.7.3 It is further submitted that in the present case the selection process being compromised in view of the large scale irregularities, illegalities etc., the learned Tribunal has materially erred in relying upon and applying the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar's case.

5.7.4 It is further submitted that the learned Tribunal has materially erred in relying upon and considering the decision of the Hon''ble Supreme Court in the case of East Coast Railway's case. It is submitted that by relying upon the decision of the Hon''ble Supreme Court in the case of East Coast Railway (Supra), the learned Tribunal has not properly appreciated the distinguishing feature/facts which are there in the present case.

5.8 It is submitted that the learned Tribunal has not properly appreciated the distinction between the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) and the decision of the Hon''ble Supreme Court in the case of All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors. reported in (2010)6 SCC 614 and the decision of the Hon''ble Supreme Court in

the case of Union of India & Ors. v. O. Chakradhar reported in (2002)3 SCC 146.

5.9 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in relying upon and considering the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) against the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) on the ground that judgment in the case of Mahipal Singh Tomar (Supra) is by Full Bench, whereas the judgments in K. Shyam Kumar (Supra) and O. Chakradhar (Supra) are by Division Bench. It is submitted that even the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) cannot be said to be by Full Bench as observed by the learned Tribunal.

5.10 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in observing that the facts of the case on hand are similar to the one in the case of Mahipal Singh Tomar (Supra). It is further submitted that the learned Tribunal has materially erred in observing that the factual matrix in the case of Mahipal Singh Tomar (Supra) and the case on hand are similar. It is further submitted that the learned Tribunal has materially erred in observing that the contentions urged in Mahipal Singh Tomar's case are similar to the contentions in the present case and hence, the learned Tribunal has no option but to accept the contention of the petitioners. It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in not relying upon and considering the decisions of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra) and decision of the Hon''ble Supreme Court in the case of East Coast Railway and Anr. v. Mahadev Appa Rao and Ors. reported in (2010)7 SCC 678. It is submitted that on facts the decisions of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra), K. Shyam Kumar (Supra) and O. Chakradhar (Supra) shall be applicable. It is submitted that therefore if the learned Tribunal could have properly appreciated the facts of the case in the case of K. Shyam Kumar (Supra), O. Chakradhar (Supra), East Coast Railway (Supra) and Mahipal Singh Tomar (Supra), the learned Tribunal would not have observed that there is a breach of principles of natural justice. It is submitted that non following the decisions of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra), O. Chakradhar (Supra), East Coast Railway (Supra), the learned Tribunal has materially erred and therefore, the finding recorded by the learned Tribunal that there is a breach of principles of natural justice has been vitiated.

5.11 It is submitted that in the facts and circumstances of the case the decisions of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra) would be directly applicable to the facts of the case on hand.

5.12 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has

materially erred in observing and holding that (i) if there is a complete investigation in the manner known to law, it would have been possible for the Department to demonstrate that it was impossible to undertake the segregation of the tainted candidates from the innocent; (ii) that the Department should have awaited the investigation of the CBI; (iii) that the Department took a hasty decision to cancel the exam and as such the decision is based on insufficient material; (iv) that not even a single attempt was made by the Department as to whether the exercise of segregation can be undertaken; (v) that there is nothing to show that it is a proven case of mass cheating/illegality/irregularity/impersonation etc.; (vi) that the task of segregation was not difficult in view of the fact that the allegation was only against 34 candidates; and (vii) there is no concrete and relevant material that widespread infirmities of all pervasive nature were available and it was impossible to segregate the tainted from the innocent.

5.13 It is submitted that by holding the above the learned Tribunal has not properly appreciated the report submitted by the Vigilance Department which was perused by the learned Tribunal.

5.14 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in relying upon and considering the decisions of the Hon"ble Supreme Court in the case of Joginder Pal & Ors. (Supra) and the decision of the Hon"ble Supreme Court in the case of Inderpreet Singh Kahlon (Supra) by directing to hold the fresh inquiry/investigation.

5.15 It is submitted that the decisions of the Hon"ble Supreme Court in the cases of Inderpreet Singh Kahlon (Supra) and Joginder Pal (Supra) would not be applicable to the facts of the case on hand. It is submitted that first of all directions given in both the cases whereby High Court acting under Article 226 of the Constitution of India, while in the present case the learned Tribunal was acting under Administrative Tribunal Act and not under Article 226 of the Constitution of India and hence, such a direction given by the learned Tribunal following the aforesaid decision would not be sustainable.

5.16 It is further submitted that in both the aforesaid cases the segregation was possible and was in fact done and hence in that factual background the Court held that cancellation of entire examination was not proper, as the segregation was done. It is submitted that in the present case the Vigilance Department after properly investigation came to the conclusion that entire examination process is compromised and hence, the segregation was not possible.

5.17 It is further submitted that the learned Tribunal has as such not considered the observations made in para 40 of the Joginder Pal's case. It is submitted that in para 40 of Joginder Pal's case, the Hon"ble Supreme Court observed that the entire selection process was vitiated would have arisen if it was not possible to distinguish from tainted to untainted candidates. It is submitted that in the Joginder Pal's case the finding of the committee was that segregation of the

tainted from untainted was possible and hence, the entire selection process could not have been said to be vitiated. It is submitted that in the present case it is a case of selection process being compromised/vitiated; segregation not possible. It is submitted that therefore the exception carved out by para 40 of the Joginder Pal's case would be squarely applicable to the facts of the case on hand. It is submitted that even the Joginder Pal's case was concerned with Judicial officer's case who had worked in the High Court for long period of time and selected by the Judge of the High Court. It is submitted that therefore the decision of the Hon''ble Supreme Court in the case of Joginder Pal (Supra) would not be applicable to the facts of the case on hand.

5.18 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that while observing and holding that the action of the Department is in breach of principles of natural justice, the learned Tribunal has materially erred in not appreciating the fact that the original applicants have failed to plead and show how they are prejudiced. It is submitted that as observed by the Hon''ble Supreme Court in the case of Om Prakash Mann v. Director of Education (Basic) and Ors. reported in (2006) SCC 558, non-observation of principles of natural justice must be shown to have caused prejudice to the person concerned. It is submitted that as observed and held by the Hon''ble Supreme Court in the aforesaid decision, doctrine of principle of natural justice cannot be applied in a straitjacket formula and to sustain the complaint of violation of principles of natural justice was not established that he has been prejudiced by nonobservance of the principles of natural justice.

5.19 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has materially erred in exceeding the jurisdiction while passing the impugned judgment and order. It is submitted that the learned Tribunal has not properly appreciated the scope and ambit of judicial decisions or the administrative decisions more particularly when after considering the report submitted by the Vigilance Department and having found that there was large scale irregularities, illegalities committed in connivance with the officials of M/s. CMC Limited, when a conscious decision was taken to cancel the entire result and consequently to terminate the services of the candidates who in fact were on probation, the learned Tribunal ought not to have interfered with such a decision. It is submitted that as held by the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) (Paras 43 and 44), judicial review of a decision by a Court or Tribunal has to be done on the basis of the Wednesbury's unreasonableness and doctrine of proportionality. It is submitted that in the present case once the selection process is found to be vitiated by serious irregularities, illegalities etc., in that case it is not required that a copy of investigation report should be served to individual candidates as the action is proposed against the malpractices alleged and not action against the individual candidate. It is submitted that finding of the learned Tribunal is based on premise that immediate action has been proposed against each candidate which is contrary to the record of the

case. It is submitted that as such investigation was directed against large scale manipulation and the fraud.

5.20 It is further submitted that even the learned Tribunal has materially erred in reviewing the decision of the Vigilance Department on merits. It is submitted that such a review is not permissible in law. It is submitted that therefore the learned Tribunal has exceeded the judicial review parameters.

5.21 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that the learned Tribunal has not properly appreciated the fact that in the present case large number of candidates appeared in the examination in which large scale irregularities have been found by the Vigilance Department and therefore, it was not possible and/or practicable to segregate the tainted and untainted and when it was found that the selection process was compromised in connivance with the officials of M/s. CMC Limited and thereafter when in the larger public interest a conscious decision was taken to cancel the result, the learned Tribunal ought not to have interfered with the same and ought not to have quashed and set aside the same solely on the ground that the same is in breach of principles of natural justice.

5.22 It is further submitted by Shri Singh, learned Additional Solicitor General of India appearing on behalf of the Department that in the present case the learned Tribunal has materially erred in not properly appreciating the fact that as such the respective candidates were on probation and therefore, they had no right to continue on post and when during the probation it was found that in the examination which they cleared, there was a large scale irregularities and illegalities and the entire selection process was compromised, the learned Tribunal ought not to have quashed and set aside the consequential action/order of termination which was as such on cancellation of the entire list.

5.23 Making above submissions and relying upon the aforesaid decisions, it is requested to allow the present Special Civil Applications and quash and set aside the impugned judgment and orders passed by the learned Tribunal in respective original applications and consequently confirm the action of the Department in canceling the result and consequent action of the termination of the respective candidates who were on probation.

6. All these petitions are opposed by Shri B.P. Tanna, learned Senior Advocate appearing on behalf of the respective original applicants in respective original applications. Shri M.S. Rao and Shri Ketan B. Shah, learned advocate has also appeared on behalf of some of the original applicants. As such Shri Tanna, learned Counsel appearing on behalf of the original applicants has made elaborate submissions and Shri Rao and Shri Ketan B. Shah, learned advocates have as such adopted the submissions made by Shri Tanna, learned Counsel appearing on behalf of the original applicants.

6.1 Shri Tanna, learned Counsel appearing on behalf of the applicants have vehemently submitted that as such the learned Tribunal has not committed any

illegality and/or irregularity in passing the impugned judgment and orders. He has vehemently submitted that there is no jurisdictional error said to have been committed by the learned Tribunal in the present case. It is submitted that as such the impugned final orders passed by the learned Tribunal are just and valid and there is no error of law and fact much less patent error which calls for interference of this Court in exercise of powers under Article 226/227 of the Constitution of India.

6.2 It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the applicants that the directions issued by the learned Tribunal in paras 68 to 70 of his impugned order can in no way said to be causing any prejudice to the petitioners herein. It is submitted that as such there is no reason as to why the original applicants go in for a thorough investigation in the present case.

6.3 It is further submitted that having regard to the admitted fact during the interregnum period the competent authority in Gujarat Postal Circle lodged FIR against those key candidates as also against M/s. CMC Limited, it is more than evident that the original applicants before the learned Tribunal cannot be said to be falling under the category of "tainted" candidates and consequently as such they are entitled to be forthwith reinstated in the services of the Department. It is submitted that however in the facts and circumstances of the case the learned Tribunal has as such denied the reinstatement pending thorough investigation as ordered by the learned Tribunal. It is further submitted that as such the impugned decision to terminate the services of the original applicants is certainly "stigmatic" for all the time to come inasmuch as the original applicants and would never be considered for appointment in any government post when they have to disclose in their form that in the past their services were terminated by the Postal Department.

6.4 It is further submitted that in the present case the learned Tribunal has rightly quashed and set aside the decision of the Department in quashing and setting aside the entire result and consequent action of termination of the respective candidates/original applicants and the same is found to be clearly in breach of principles of natural justice.

6.5 It is submitted that in the present case there is a violation of principles of natural justice which in turn has caused serious prejudice to the original applicants.

6.6 It is further submitted that the learned Tribunal has as such has not committed any error in placing its reliance on the decisions of the Hon'ble Supreme Court in the case of Inderpreet Singh Kahlon (Supra); Mahipal Singh Tomar (Supra); East Coast Railway & Anr. (Supra); Union of India & Ors. v. Rajesh P.U. Puthuvalnikanthu reported in (2003)7 SCC 285; Joginder Pal & Ors. (Supra) and decision of the Hon'ble Supreme Court in the case of Sarwan Singh Lamba & Ors. v. Union of India & Ors. reported in (1995)4 SCC 546. It is submitted that relying upon the aforesaid decisions of the Hon'ble Supreme

Court with full force to the facts of the case on hand, the learned Tribunal has not committed any error in issuing directions in the impugned orders issued in paras 68 to 70.

6.7 Shri Tanna, learned Counsel appearing on behalf of the original applicants has also relied upon the decision of the Hon''ble Supreme Court in the case of Registrar General, High Court of Gujarat v. Jayshree Chamanlal Buddhbhatti reported in (2013)16 SCC 59.

6.8 It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that in the present case the Department has not done anything for all these months except filing the present petitions and lodging an FIR in Gandhinagar against those 34 tainted candidates against whom the initial complaint was made with regard to irregularities and illegalities and against M/s. CMC Limited. It is submitted that as such no exercise was done by the Department to segregate the cases of "tainted" and "untainted" candidates, which as per the aforesaid decisions of the Hon''ble Supreme Court is must. It is submitted that unless and until sincere efforts were made to segregate "tainted" and "untainted" candidates, there are all possibilities of punishing the innocent persons for no fault of them. It is submitted that therefore in the aforesaid facts and circumstances of the case and when it has been found by the learned Tribunal that no thorough investigation has been carried out by the Department and/or even the Vigilance Department and thereafter when the learned Tribunal has issued the directions in paras 68 to 70, it cannot be said that the learned Tribunal has committed any error. It is submitted that if the directions contained in paras 68 to 70 are carried out, in that case no prejudice shall be caused to the Department.

6.9 It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that the decisions of the Hon''ble Supreme Court in the case of O. Chakradhar (Supra); K. Shyam Kumar (Supra); East Coast Railway & Anr. (Supra); BSNL & Ors. v. Surendra Nath Pandey & Ors. reported in (2011)15 SCC 81; Joginder Pal (Supra) and the decision of the Hon''ble Supreme Court in the case of Tanvi Sarwal v. CBSE & Ors. reported in (2015)6 SCC 573, which were relied upon by the learned Counsel appearing on behalf of the Department shall not be applicable to the facts of the case on hand.

6.10 Shri Tanna, learned Counsel appearing on behalf of the original applicants has submitted that the learned Additional Solicitor General of India appearing on behalf of the Department has relied upon paras 8, 10 and 12 of the decision of the Hon''ble Supreme Court in the case of O. Chakradhar (Supra). It is submitted that it is necessary to point out at this stage that this was a question of typewriting test which was an essential requirement. It is submitted that there were certain serious irregularities in the conduct of the examination. The Hon''ble Court held that nature and extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the

mischief played is so called widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefitted or wrongfully deprived of their selection, in such case it will be neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. It is submitted that the motive behind the irregularities committed also has its relevance.

6.11 It is submitted that in the facts and circumstances of the present case, the ratio of O. Chakradhar (Supra) would not be applicable. It is submitted that as held by the Hon"ble Supreme Court, it was "event" which decided the issue. It is submitted that the illegalities and irregularities alleged in the facts and circumstances of this case were not widespread and all pervasive and affecting the result. It is submitted that it was possible to pick out the person who has been allegedly benefitted and it was possible to hold who were wrongly deprived of their selection. It is submitted that in the facts and circumstances of the present case, there is no murmur of allegations against 168 present private respondents who were appointed and have worked for nine months. It is submitted that in this case, paras 10 & 12 refers to the method of examination and the enquiry by CBI. It is further submitted that in the facts and circumstances of the present case, it has not been pointed out how irregularities of this type were committed here. It is further submitted that both in case of Mahipal Sing Tomar (Supra) as well as Inderpreet Singh Kahlon (Supra), the Hon"ble Supreme Court have taken the view that the judgment rendered in the case of O. Chakradhar (Supra) would not be applicable.

6.12 Now, so far as the reliance placed upon the decision of the Hon"ble Supreme Court in the case of K. Shyam Kumar (Supra) by the learned Additional Solicitor General of India appearing on behalf of the Department, it is submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that the learned Additional Solicitor General of India has relied upon paras 11, 15, 18, 19, 20, 36, 41, 42 and 43 of the said decision.

It is submitted that if one looks at those paras, it would be quite clear that in facts and circumstances of the case the High Court had found no reason to cancel the first written examination and to conduct a retest. It is submitted that the High Court also noticed that when the order was passed only the Vigilance Report was available with the Board which was insufficient to support that order and materials collected by CBI could not be relied upon. It is submitted that the Hon"ble Supreme Court was primarily concerned with the question whether the High Court was justified in interfering with the decision taken by the Board in conducting a retest for those who had obtained minimum qualifying marks in first written test. It is submitted that as a matter of fact, the Hon"ble Supreme Court permitted the Board to declare the result of second test and allowed to appoint the selected candidates. It is submitted that the Hon"ble Supreme Court examined whether the High Court was justified in directing the Board to go

ahead with the recruitment process based on first written test. It is submitted that the Hon''ble Supreme Court observed that Railway Board had three alternatives i.e.

- (i) To cancel the entire written test and to conduct a fresh written test inviting application afresh;
- (ii) To conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test; and
- (iii) To go ahead with the first written test (as suggested by the High Court), confining the investigation to 62 candidates against whom there were serious allegations of impersonation.

It is further submitted that the Hon''ble Supreme Court in the said decision pointed out that serious infirmities were pointed out in the conduct of the first written test. It is submitted that question was, which was the best alternative the Board could have accepted. It is submitted that question was whether decision taken by the Board to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test was so unreasonable and whether the Board before reaching that conclusion had taken into account the matters which they ought not to have taken into account. It is submitted that the Hon''ble Court applied Wednesbury test and it felt that High Court was wrong in accepting the third alternative.

It is further submitted that this was not a case where question of various alternatives were available. It is submitted that as a matter of fact, no irregularities were initially found and prima facie alleged some complaints were found against 34 individuals of U.P. State, who had given a common address and who had allegedly contacted some officers of CMC. It is submitted that it is nobody''s case that present private respondents were before the High Court had in any manner any contact with anyone of these. It is submitted that the private respondents has not remotely contacted officers of CMC who have allegedly done some irregularities. It is a submitted that as a matter of fact, neither any material before the Hon''ble Tribunal nor before the High Court nor in the communication which took place on 7th May between Post Master General and Crime Branch at Gandhinagar, any reference is made to any of the private respondents who have succeeded before the Hon''ble Tribunal. It is submitted that therefore, the said decision has no applicability whatsoever.

6.13 Now, so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of Surendra Nath Pandey & Ors. (Supra) by the learned Additional Solicitor General of India more particularly paras 12, 20, 28, 29, 33, 36 and 38 are concerned, Shri Tanna, learned Counsel appearing on behalf of the original applicants has submitted that while para 12 deals with the submission made by the Counsel for BSNL and para 20 also is a submission. It is submitted that it is necessary to appreciate that even submissions stated that result could be cancelled only after candidate was found guilty and it can be only

on the basis of a finding of unfair means given by a properly constituted committee. It is submitted that in the facts and circumstances of that case, respondents were permitted the use of books specifically prescribed for the purpose of answering the question paper. It is submitted that however, books that were prescribed did not include the guidebook which was used by all the candidates. It is submitted that the examiner in that case detected that in the answer book of Paper X, answers written by 66 candidates at the centre at which the respondents along with other candidates had taken the examination were so similar so as to indicate that this was a suspected case of mass copy. It is submitted that examiner did not evaluate the answer book. It is submitted that the Department high ranking officers went through those papers and a three Member Committee was constituted and had examined all the 66 answer books. It is submitted that the Hon'ble Supreme Court after perusing observations of para 26 & 27 of the judgment, felt that the procedure adopted by BSNL cannot be said to be unfair and arbitrary. It is submitted that it is necessary to appreciate that a three Member Committee was specifically constituted in that case.

It is submitted that in facts and circumstances of the present case, no such exercise have ever taken place. It is submitted that it is not even a case of alleged mass copying. It is submitted that it is not even a case of taking guidebook in examination hall and innocent candidates have nothing to do with such issue.

It is submitted that the Hon'ble Supreme Court held that bona fide enquiry was made and therefore it felt that High Court was wrong. It is submitted that it applied on principles in case of Ramanjini which is dealt with both by Inderpreet Singh Kahlon's case and Mahipal Singh Tomar's case.

It is submitted that in para 38 of the said judgment, the Hon'ble Supreme Court felt that, that was a case of mass copying which was discovered at the time of reviewing the answer books. It is submitted that it would not improve the case of respondents in that case. It is submitted that therefore the aforesaid decision would have no applicability and no bearing on the facts and circumstances of the case on hand.

6.14 Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of Tanvi Sarwal (Supra) by the learned Additional Solicitor General of India is concerned, it is submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that the said decision was not cited before the learned Tribunal. It is submitted that paras 10, 12 & 14 were referred to but they deal with the facts and paras 17, 18, 19, 20 and 23 were relied upon. It is submitted that before those paras are dealt with, it is necessary to point out that retest was directed in para 25 of the judgment. It is submitted that if one looks at paras 18, 19, 20 and 23, it would be quite clear that disclosure in the investigation suggest that the benefit of answer key has been availed by several candidates taking the examination by illegal means. It is

submitted that 44 candidates were identified and Hon''ble Court felt that it was not unlikely that many more candidates may have availed such undue advantage being part of the overall design and in the process had been unduly benefitted. It is submitted that in view of the widespread network that had operated as the status report disclose and the admission of the persons arrested including some beneficiary candidates, the Hon''ble Court came to the conclusion that there were strong possibilities of identification of other candidates as well involved in such malpractices, that the examination had become a suspect. It is submitted that the Hon''ble Court felt that it was widespread that identifying 44 candidates would not solve the problem. It is submitted that in the facts and circumstances of the present case, it is not the issue.

It is submitted that in para 20 also it is pointed out that out of 123 solved answer of a particular code and retrieved from the mobile set of one of the persons arrested, 102 answers were found correct, 358 mobile numbers had been pressed into service and at least 300 vests fitted with electronic devices have been used.

It is submitted that therefore the case on hand is not the case of such a widespread irregularities at all as even in that case retest was suggested.

6.15 Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of Gohil Vishvarah Hanubhai & Ors. v. State of Gujarat & Ors. rendered in Letters Patent Appeal No.73/2016 in Special Civil Application No.11149/2015 and other allied matters is concerned, it is submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that the said decision shall not be applicable to the facts of the case on hand. It is submitted that it was a case of malpractice conducted in examination of Talati in Revenue Department. It is submitted that on facts and considering the material on record the Division Bench was of the view that this was not a case that tainted candidates could be segregated. It is submitted that even in the case before the Division Bench actual appointment were not made and the concerned candidates were placed in the select list only. It is submitted that therefore the Division Bench has also held that those who were appointed pursuant to the selection list will stand on a different footing.

6.16 It is submitted that the facts of that case which were of widespread irregularities would not apply in the facts and circumstances of the case on hand. It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that in the present case the respective candidates worked for more than 9 months, they were on probation period and therefore, their services could not have been brought to an end by passing a simpliciter and nonspeaking order which had earlier motive of malafide powers behind it. It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that as such the respective original applicants who were already appointed worked for 9 months and they were on probation. It is submitted that the original applicants prior to their joining the postal department had either left

their job either in government or private or given for the offer of appointment made to them. It is submitted that in all the cases the original applicants herein after joining the Postal Department in pursuance of the selection in question even did not apply in response to the Postal Department for recruitment to the post of Postal Assistants issued subsequently. It is submitted that therefore when the complaint was made only against 34 tainted persons only and as submitted herein above, no efforts at all were made by the Department/Vigilance Department to segregate the tainted and untainted candidates to punish the innocent persons like the original applicants who are 168 in number would be doing injustice to them and as such violative of Article 14 of the Constitution of India inasmuch as the tainted candidates and untainted candidates are treated equal.

6.17 It is further submitted by Shri Tanna, learned Counsel appearing on behalf of the original applicants that except filing the present petitions no further steps have been taken by the Department pursuant to the directions issued by the learned Tribunal, issued in the impugned judgment and order. It is submitted that during the interregnum period the Department could have undertaken the exercise of segregating the tainted and untainted candidates as directed by the learned Tribunal. It is submitted that therefore the present petitions may not be entertained and Department may be directed to complete the thorough investigation/inquiry and to find out and/or segregate the tainted and untainted candidates at the earliest as the respective original applicants who were already appointed are out of job since the date of their termination which as such are found to be illegal in violation of principles of natural justice.

Making above submissions and relying upon above decisions it is requested to dismiss all these petitions.

7. As observed herein above Shri M.S. Rao and Shri Ketan Shah, learned advocates appearing for respective other original applicants have adopted the submissions made by Shri Tanna, learned Counsel appearing on behalf of the rest of the original applicants.

7.1 Learned Counsel appearing on behalf of the Department has submitted that there is one additional distinguishing feature in the case of the applicants/candidates represented by Shri Ketan Shah, learned advocate that respective candidates were never appointed like other candidates and they were as such in the select list, which does not confer any right on the applicants as observed by the Hon''ble Supreme Court in catena of decisions. It is submitted that in those cases the decision of the Division Bench of this Court in the case of Gohil Vishvarah Hanubhai & Ors. (Supra) shall be applicable with full force.

8. Heard learned advocates appearing for respective parties at length. We have perused the impugned judgment and orders passed by the learned Tribunal in respective original applications. We have also perused and considered the Vigilance Department and also the initial complaints received which at the

relevant time were against 34 persons. We have also perused and considered the subsequent complaint filed by the Department which has been filed before the CID Crimes/Crime Branch.

At the outset it is required to be noted that by impugned judgment and orders, the learned Tribunal has quashed and set aside the order passed by the Department canceling the entire result of the examination conducted for the post of P.A./S.A. as well as consequent action of the Department terminating the services of the respective original applicants who as such were at the time of their termination were on probation. However, while quashing and setting aside the action of the Department in cancelling the entire examination/result of the examination for the post of P.A./S.A. and while quashing and setting the action of the Department terminating the services of the respective original applicants and/or cancelling the select, the learned Tribunal has quashed and set aside the same solely on the ground that the same is in breach of principles of natural justice. That by impugned judgment and order the learned Tribunal as such has not passed any order of reinstatement, however has issued the following directions in paras 68 to 70 and has observed and held as under:

"68.The select list shall be kept in abeyance. The respondents are directed to probe into the matter by thorough investigation in a fair and transparent manner to be undertaken either by Vigilance Wing of the Department or by any suitable Investigating Agency. M/s. CMC Ltd. at appropriate high level should also be involved in the process as they will be able to throw much needed light in the affair. Depending upon the outcome of the probe the respondents shall take appropriate decision relating to operation of the select list in the light of the decision of the Hon"ble Supreme Court in the case of Inderpreet Singh Kahlon v. State of Punjab [(2006)11 SCC 356 and Joginder Pal & Ors. v. State of Punjab & Ors. [(2014)6 SCC 644. Having regard to the fact that the applicants are out of job, we direct the respondents to complete the whole exercise as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order.

69. In view of our answer to the point No.(i) and (ii), it may be argued that as a consequence of the same, the applicants are entitled to be reinstated into service, but we decline to grant the relief of reinstatement into service for the reason that there are specific allegations against 34 specified candidates in the complaint received by the Public Grievances Cell on 09.04.2015. None of the selected/appointed candidates pleads guilty. As such it is difficult to ascertain who are the 34 amongst the selected/appointed. The possibility that all the 34 or some amongst them may have been already appointed cannot be overruled. Such tainted, unscrupulous candidates who are responsible for the present crisis deserve to be seriously dealt with in accordance with law. Hence, we hold that the applicants are not entitled for reinstatement into service till such time the respondents complete the exercise as ordered herein above.

70. Before parting with the case, however, we may observe that it is expected

that the Secretary, Department of Posts having regard to the magnitude of the matter shall leave no stone unturned to bring the guilty to book. It is their duty to unearth the scam and spare none however high he/she may be. We expect the Department to make thorough investigation into the matter."

8.1 Before considering the submissions made by the learned advocates appearing for respective parties and before considering the decisions of the Hon"ble Supreme Court and this Court relied upon by the learned advocates appearing respective parties, few facts which are undisputed and the findings recorded by the learned Tribunal are required to be considered, which are as under:

8.2 It is not in dispute that in the present case the dispute is with respect to 5 circles viz. Chhatisgarh, Gujarat, Haryana, Rajasthan and Uttarakhand. That initially the Department issued a complaint which was against 34 persons with respect to the illegality and malpractices in conducting the examination in connivance with the officers of M/s. CMC Limited and impersonation etc. That the Vigilance Department after thorough investigation/inquiry found the substance and had come to the conclusion that serious malpractices/aberrations have been noticed mainly with regard to 5 circles only viz. Gujarat, Haryana, Chhatisgarh, Rajasthan and Uttarakhand. That the Vigilance Commission has also observed that primarily no serious malpractices / irregularities have been noticed in the P.A./S.A. examination of 11 Circles, however total 70 circles, viz. Andhra Pradesh, Assam, Jammu and Kashmir, Karnataka, Kerala, Maharashtra, North East, Odisha, Tamil Nadu, West Bengal and Punjab. Thus, Vigilance Department has found significant malpractices with regards to 5 circles only viz. Gujarat, Haryana, Chhatisgarh, Rajasthan and Uttarakhand. That the Vigilance Commission has noticed serious irregularities/malpractices in the fair conduct of the examination of P.A./S.A. Recruitment 201314 in the above 5 circles. The Vigilance Commission/Report has also noticed heavy variation in the performance of many candidates visavis their earlier academic performance in the qualifying senior secondary 10+2 examination. We have carefully considered the Vigilance Report on the basis of which impugned decisions were taken by the Department to cancel the entire result of the examination of P.A./S.A. Recruitment 201314 and consequently to terminate the services of those candidates who were declared successful in the aforesaid examination and who were appointed on probation. At this stage it is required to be noted that as such the examination for the post of P.A./S.A. Recruitment 201314 was conducted in 22 circles and on receipt of the complaint with respect to the large scale malpractices in the examination of P.A./S.A. the Department initially took a decision to cancel the examination held at Uttar Pradesh, Delhi, Bihar, Madhya Pradesh, and Himachal Pradesh and it was directed to conduct reexamination in respect of the said circles. As such reexamination was held in Delhi, Himachal Pradesh, Madhya Pradesh, however reexamination was not conducted in Uttar Pradesh and Bihar. That as per the directions of the Vigilance Division the results with respect to remaining circles were kept in abeyance. However, subsequently, on getting

clearance from the Vigilance Division, the abeyance were declared in respect of 10 circles viz. Kerala, Tamilnadu, Karnataka, Andhra Pradesh, West Bengal, North East, Assam, Jharkhand and Odisha. As ordered herein above the reexamination held at Delhi, Madhya Pradesh and Himachal Pradesh was also ordered to be cancelled as directed by the Vigilance Department. That with respect to the 11 circles even the abeyance orders were declared except Gujarat, Haryana, Uttarakhand, Chhatisgarh and Rajasthan where large scale malpractices and compromise in the examination was found and noticed.

8.3 So far as Chhatisgarh, Gujarat, Haryana, Rajasthan, Uttarakhand circles are concerned, large number of candidates applied and appeared and large number of candidates were found to be selected. The details of the P.A./S.A. candidates of examination 201314 with respect to the aforesaid circles is in the tabular form as under:

Sr. No.

Name of the circle

No. applied

No. appeared

No. selected

No. for which appointment issued

No. not issued with appointment orders

1

Chhatisgarh

15530

112387

163

40

123

2

Gujarat

106605

61036

652

290

362

3

Haryana

51450

39316

257

199

58

4

Rajasthan

87929

65228

427

339

88

5

Uttarakhand

20662

14870

166

08

158

8.4 In light of the aforesaid facts and circumstances the impugned judgment and orders passed by the learned Tribunal, the decisions relied upon by the learned advocates appearing for respective parties are required to be considered.

As observed herein above the learned Tribunal has passed the impugned judgment and orders quashing and setting aside the action of the Department in cancelling the entire result of the examination and consequent action of terminating the services of the original applicants who were on probation solely on the ground that the same is in breach of principles of natural justice and that the Vigilance Department has not conducted the thorough investigation/inquiry. At this stage it is required to be noted that even the learned Tribunal has specifically observed and held issue No.3 and 4 in negative and in favour of the

Department, however has held the issue Nos.1 and 2 in the affirmative and against the Department. The learned Tribunal has specifically observed that impugned orders cannot be said to be stigmatic/punitive in nature. The learned Tribunal has also observed and held that impugned orders of termination do not call for the interference on the ground that the same came to be passed by invoking provisions of Rules, 1965. So far as the aforesaid findings are concerned, the original applicants have not challenged the same and therefore, it can be said that the said findings have attained the finality. Thus, the only question which is posed for consideration of this Court would be whether in the aforesaid facts and circumstances of the case, the learned Tribunal is justified in holding that the action taken by the respondents to cancel the examination and the consequent orders of terminating the original applicants from service is in violation of principles of natural justice?

8.5 While considering the aforesaid question, even some of the observations made by the learned Tribunal in the impugned orders are required to be referred to which are as under:

"35. We have carefully perused the above documents. In the letter received by the Public Grievances Section on 09.04.2015, it is alleged that more than 34 candidates who were selected as PA/SA belonging to different cities of Uttar Pradesh, have used same email address, phone number while applying for the post of PA/SA and they are involved in this recruitment system. Further allegations are also made therein, which we do not propose to highlight for the reason that the Department had taken a decision to entrust the matter to Central Bureau of Investigation and in fact already written two letters requesting investigation. If any further particulars found therein are made known in this order, the persons involved/interested may make an attempt to tamper with available witnesses/evidences which may affect the investigation by the Central Bureau of Investigation. Therefore, we refrain from furnishing all the particulars mentioned in the said complaint received on 09.04.2015.

36. We have also perused the report of the investigation Section of the Vigilance Division. A perusal of the same reveals that the Investigation Section before taking any cognizance of the complaint received on 09.04.2015 contacted the authors of the said complaint who are unsuccessful candidates in the examination. Accordingly, they responded to the call of the Investigation Section. The report reveals that all the alleged 34 candidates have violated three mandatory conditions prescribed in the notification dated 21.02.2014 inviting applications. It also reveals that certain candidates are involved in impersonation also. As already observed, since a decision was taken to entrust the matter for investigation by the Central Bureau of Investigation, we refrain from stating all the particulars mentioned therein.

37. On perusal of the report, we further find that M/s. CMC Ltd. committed serious lapses. Certain applications which ought to have been rejected were entertained and as per the report, it may be due to the collusion between the

candidates and the officials of M/s. CMC Ltd. The report states that it would not be possible for certain candidates to be successful without the active involvement of the officials of M/s. CMC Limited.....

48.It is already observed that since a decision was taken to entrust the matter to CBI for investigation and in fact, the Secretary had already written two letters to the Director, CBI as particularised at paragraph 34 of this order, we are of the opinion that supplying a copy of the complaint and the report of the vigilance may cause hindrance to the investigation to be carried out by the CBI. Even otherwise we are not drawing any inference against any of the applicants and hence the question of supplying the copies does not arise. The principles in Swaran Singh (supra) will apply only in a situation where inferences were to be drawn against the applicants....

66. We observe that there are evidences to suggest that in respect of 34 candidates against whom complaints were received, malpractices have been resorted to in a planned manner. We also note that the report of the Vigilance Division discloses disturbing patterns. Incidents of unusual coincidence indicate on unholy network at work also involving some representatives of M/s. CMC Ltd."

8.6 However, thereafter, the learned Tribunal has held the action of the Department in cancelling the result of the examination in its entirety and the consequent action of terminating the services of the original applicants on the ground that the same is in breach of principles of natural justice by observing that (i) the copy of the investigation / inquiry report submitted by the Vigilance Department was not supplied to any of the candidates whose services were terminated and no action oriented notice or opportunity of hearing was given to them proposing cancellation of examination and termination of their services; (ii) the Vigilance Division did not give opportunity to any one of the candidates to represent his/her case or explain his/her position; (iii) it did not confront any of the candidates available before it; (iv) even if there is a complaint, that cannot be the basis for cancellation of the examination; (v) neither the impugned order disclose basis on which the examination was cancelled nor even before the learned Tribunal they were supplied with the copy of the complaint which was received on 08/09.04.2015; (vi) had there been a complete investigation in the manner known to law proposed, it would have been possible for the respondents to demonstrate that it was impossible for segregation of tainted from the innocent. That the task of segregation may not be that much difficult as apprehended in view of the fact that allegation is only against 34 candidates insofar as Gujarat circle is concerned. We find no concrete and relevant material that widespread infirmities of all pervasive nature, which could be considered in its entirety or as a whole and it was impossible to segregate the tainted from the innocents. No justification is shown for not taking the exercise of segregation.

8.7 Making above observations and thereafter relying upon the decision of the Hon"ble Supreme Court in the case of Mahipal Singh Tomar (Supra); East Coast Railway & Anr. (Supra); Joginder Pal (Supra) and Inderpreet Singh Kahlon

(Supra), the learned Tribunal has passed the impugned orders by holding the action of the respondents / Department in breach of principles of natural justice. At this stage it is required to be noted that the learned Additional Solicitor General of India appearing on behalf of the Department placed heavy reliance upon the decisions of the Hon''ble Supreme in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra), however the learned Tribunal has thought it fit to rely upon the decisions of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) and not on the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra) solely on the ground that the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) would be applicable to the facts of the case on hand, which is delivered by the Full Bench of the Hon''ble Supreme Court.

9. In light of the aforesaid facts and circumstances, the question in the present group of petitions viz. Whether in the facts and circumstances of the case, the learned Tribunal is justified in interfering with the action of the Department in canceling the result of the examination for the post of P.A./S.A. Recruitment 201314 and the consequent action of termination of candidates who were on probation, in breach of principles of natural justice?

While considering the aforesaid question, the decisions of the Hon''ble Supreme Court in the cases of K. Shyam Kumar (Supra); O. Chakradhar (Supra) and the decision of the Division Bench in the case of Gohil Vishvarah Hanubhai & Ors. relied upon by the learned Additional Solicitor General of India appearing on behalf of the Department and the decisions of the Hon''ble Supreme Court in the cases of Mahipal Singh Tomar (Supra); East Coast Railway & Anr. (Supra), Inderpreet Singh Kahlon (Supra) and Joginder Pal (Supra) relied upon by Shri Tanna, learned Senior Advocate appearing on behalf of the original applicants are required to be referred to and considered.

9.1 First of all, we shall deal with and consider the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra). In the case before the Hon''ble Supreme Court, in the recruitment process the Vigilance Report indicated leakage of question paper, large scale impersonation of candidates, mass copying etc. in written test and the possibility of involvement of railway staff and outsiders. The reexamination was ordered in that case also the Vigilance Department recommended that the matter be referred to CBI. Some of the candidates approached the learned Tribunal questioning the decision to conduct retest and also sought for a declaration that they are eligible to be appointed to Group "D" passed pursuant to their selection. The learned Tribunal found no irregularity in the decision taken by the Board in conducting a retest which was taken after referring to the vigilance report and other relevant materials. In a writ petition challenging the decision of the Tribunal, the High Court found no reasons to cancel the first written examination and to conduct a retest for 2690 candidates who got minimum qualifying marks in the written test which included 62 candidates against whom there were serious allegations of

impersonation. Referring to the vigilance report, the High Court concluded that the controversy virtually boils down to identifying 62 candidates whose cases stood referred to CEQD/HYD for their certification and hence the process of recruitment could be proceeded with for the rest of the candidates. The High Court also held that the materials available to support the complaint of leakage of question papers were limited and had no nexus to the large scale irregularities, noticed by the Railways. The High Court also noticed that when the order dated 04.06.2004 was passed only the vigilance report was available with the Board which was insufficient to support that order and the materials collected by the CBI subsequently could not be relied upon to support the decision. It was also pointed out by the High Court that no copy of the vigilance report was also made available to the petitioners and the decision taken to conduct a retest was arbitrary, illegal and unreasonable. That thereafter applying *Wednesbury's* principle of unreasonableness the High Court held that the decision of the Board was illegal, arbitrary and unreasonable and directed the Board to finalize the selection on the basis of the first written test and to issue appointment orders to all the candidates except the 62 candidates against whom there were allegations of impersonation. Aggrieved by the decision of the High Court, the Department/Recruitment Board approached the Hon"ble Supreme Court and the Hon"ble Supreme Court after considering the scope of judicial review; grounds for judicial review; proportionality vis-a-vis *Wednesbury's* principle of unreasonableness, relative scope, has observed and held as under:

"18. We are, in this case, primarily concerned with the question whether the High Court was justified in interfering with the decision taken by the Board in conducting a retest for those who had obtained minimum qualifying marks in the first written test and directing the Board to go ahead with the recruitment process on the basis of first written test against which there were serious allegations of irregularities and malpractices. When this matter came up for admission before this Court on 20.01.2006, this Court permitted the Board to declare the result of the second test and proceed to appoint the selected candidates, however, it was ordered that the appointments made be subject to the result of these appeals. We are informed that candidates who got qualified in the retest were already appointed and have joined service.

19. We will first examine whether the High Court was justified in directing the Board to go ahead with the recruitment process based on the first written test in the wake of the report of the Vigilance and the materials collected by the CBI subsequently. The report of the Vigilance has prima facie established that the allegations of leakage of question papers, large scale impersonation of candidates, mass copying etc. was true. Possibility of the involvement of the staff of Railways and outsiders was also not ruled out by the Vigilance. In such circumstances, we fail to see how the High Court has concluded that there is no illegality in going ahead with the recruitment process on the basis of the first written test.

20. We may indicate that the Railway Board had three alternatives viz., (1) to cancel the entire written test, and to conduct a fresh written test inviting applications afresh; (2) to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test; and (3) to go ahead with the first written test (as suggested by the High Court), confining the investigation to 62 candidates against whom there were serious allegations of impersonation.

21. The High Court applying the *Wednesbury*'s principle accepted the last alternative by rejecting the decision by the Railway Board to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test. We are of the view that the High Court has wrongly applied the above principle and misdirected itself in directing the Board to accept the third alternative. We will examine the decision of the High Court by applying the principle of *Wednesbury* unreasonableness as well as the doctrine of proportionality. Before that let us examine both the concepts at some length.

22. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In *Council of Civil Service Unions v. Minister of State for Civil Service* (1984) 3 All ER 935 the (GCHQ case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.

23. Ground of irrationality takes in *Wednesbury* unreasonableness propounded in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation* (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an "umbrella concept" which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows :

"By "irrationality" I mean what can now be succinctly referred to as "*Wednesbury*'s unreasonableness",.....It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no

sensible person who had applied his mind to the question to be decided could have arrived at it."

36. *Wednesbury* applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that *Wednesbury* has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but *Wednesbury* has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

37. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision maker and whether the decision maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

39. The courts have to develop an indefeasible and principled approach to proportionality till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the Court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision maker.

41. We have already indicated the three alternatives available to the decision maker (Board) when serious infirmities were pointed out in the conduct of the first written test. Let us examine which was the best alternative, the Board could have accepted applying the test of *Wednesbury* unreasonableness. Was the decision taken by the Board to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test so unreasonable that

no reasonable authority could ever have decided so and whether the Board before reaching that conclusion had taken into account the matters which they ought not to have taken into account or had refused to take into account the matters that they ought to have taken into account and the decision taken by it was so unreasonable that no reasonable authority could ever have come to it? Judging the decision taken by the Board applying the standard laid down in the Wednesbury principle unreasonableness, the first alternative that is the decision to cancel the entire written test and to conduct a fresh written test would have been time consuming and expensive. Initially 10,02,909 applications were received when advertisement was issued by the Board out of which 5,86,955 were found to be eligible and call letters were sent to them for appearing in the written test held at various centres. 3,22,223 candidates appeared for the written test, out of which 2690 were selected. Further the candidates who had approached the Court had also not opted that course instead many of them wanted to conduct a retest for 2690 candidates, the second alternative. The third alternative was to go ahead with the first written test confining the investigation to 62 candidates against whom there were serious allegations of impersonation. The Board felt in the wake of the vigilance report and the reports of the CBI, it would not be the best option for the Railway Administration to accept the third alternative since there were serious allegations of malpractices against the test. From a reasonable man's point of view it was felt that the second option i.e. to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test was the best alternative.

42. We will now apply the proportionality test to three alternatives suggested. Principle of proportionality, as we have already indicated, is more concerned with the aims of the decision maker and whether the decision maker has achieved the correct balance. The proportionality test may require the attention of the Court to be directed to the relative weight according to interest and considerations. When we apply that test and look at the three alternatives, we are of the view that the decision maker has struck a correct balance in accepting the second alternative. First alternative was not accepted not only because such a process was time consuming and expensive, but nobody favoured that option, and even the candidates who had approached the court was more in favour of the second alternative. Applying the proportionality test also in our view the Board has struck the correct balance in adopting the second alternative which was well balanced and harmonious.

43. We, therefore hold, applying the test of Wednesbury unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair, reasonable, well balanced and harmonious. By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale of impersonation by candidates, mass copying in the first written test.

46. We also find it difficult to accept the reasoning of the High Court that the

copy of the Vigilance report should have been made available to the candidates at least when the matters came up for hearing. Copy of the report, if at all to be served, need be served only if any action is proposed against the individual candidates in connection with the malpractices alleged. Question here lies on a larger canvas as to whether the written test conducted was vitiated by serious irregularities like mass copying, impersonation and leakage of question paper, etc. not against the conduct of few candidates.

47. In this connection reference may be made to the judgment of this Court in Bihar School Examination Board v. Subhas Chandra Sinha. That was a case where 36 students of S.S.H.E. School, Jagdishpur and H.E. School Malaur, District Shahbad, moved a Writ Petition before the Patna High Court against the order of the Board cancelling annual Secondary School Examination of 1969 in relation to Hanswadih Centre in Shahbad District. The High Court quashed the order of cancellation and directed the Board to publish the results. Against the judgment and order of the High Court the Board filed an appeal by way of special leave petition to this Court. This Court allowed the appeal and upheld the order of the Board cancelling the examination. On the complaint that no opportunity was given to the candidates to represent their case before cancellation, this Court observed as follows :

"13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

48. Applying the above principle, we are of the view that the finding recorded by the High Court that non supply of the copy of the Vigilance report to the candidates was a legal infirmity, cannot be sustained."

9.2 Now, we shall consider the decision of the Hon''ble Supreme Court in the case of O. Chakradhar (Supra) which has also been relied upon by the learned Additional Solicitor General of India appearing on behalf of the Department very vehemently. In the case before the Hon''ble Supreme Court in the case of O. Chakradhar (Supra), the Railway Recruitment Board, Bangalore issued an advertisement notice for recruitment to the posts of Junior Clerk Cum Typist. In pursuance of the selection held, the original applicant was appointed as Junior Clerk cum Typist. After about three years of appointment, a communication was

received by the original applicant from the Railway administration. That it has come to the notice of the Railway Board that the RRB, Bangalore has not subjected the candidates to typewriting test which was an essential requirement besides their being certain serious irregularities in the conduct of examination and that therefore, the Railway Board after considering the matter totally and taking into account the report of CBI and serious nature of irregularities in conduct of selection have decided to cancel the entire panel and to terminate the services of all the candidates appointed on South Central Railway by giving the notice as per the Rules. That thereafter the service of the concerned candidate was terminated. The appointed candidates preferred petition before the Central Administrative Tribunal challenging his termination among others on the ground that he was not responsible for any kind of irregularity and in case it was committed by the Railway Recruitment Board, he could not be held responsible for it. It was submitted that it could not be said that each and every selected candidate was involved in it, if at all. Therefore, it was submitted that a decision to terminate the services of all the appointees or to cancel the selection is bad. It was also submitted that a proper show cause notice should have been individually issued to each selectees so as to enable them to submit their proper explanation in respect of the allegation of irregularities, in absence of such a notice the termination order is bad being in violation of principles of natural justice.

9.3 The learned Tribunal held that merely saying that serious irregularities were committed in conducting the selection or the typing test was not held, such general allegations could not be enough to take a decision to cancel the whole selection. The learned Tribunal also observed that the show cause notice which was issued is silent about any irregularity in the selection which could be attributable to the applicant. The learned Tribunal also observed that the report of the CBI cannot be the only refuge for cancellation of the selection, but its contents should have been brought to the knowledge of applicant in a concise form to enable him to give a proper reply but it was not done by the administration. Therefore, the learned Tribunal observed that in absence of proper notice and opportunity to the candidate, the order of termination of stands vitiated. The learned Tribunal also observed that the CBI report was also not placed before it. Consequently, the learned Tribunal set aside the termination order providing that proceedings could be initiated de novo by issuing fresh show cause notice in the light of the observations made in the judgment.

9.4 The Department preferred appeal before the High Court. The High Court dismissed the petition confirming the order passed by the learned Tribunal. The aforesaid decisions were the subject matter before the Hon''ble Supreme Court. That while allowing the appeal and quashing and setting aside the orders passed by the learned Tribunal confirmed by the High Court and confirming the orders passed by the Department, the Hon''ble Supreme Court has observed and held as under:

"8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is no widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

12. As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter mixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore, of the view that it is not one of these cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore, deserve to be allowed."

9.5 In the case of Bihar School Examination Board v. Subhas Chandra Sinha reported in (1970)1 SCC 648, in para 13 the Hon"ble Supreme Court has observed and held as under:

"13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging anyone individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for

the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged anyone with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

9.6 In the case of *Surendra Nath Pandey & Ors. (Supra)*, in paras 28, 33 and 36, the Hon"ble Supreme Court has observed and held as under:

"28. We are of the considered opinion that the procedure adopted by the Appellants can not be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It can not be said to be in breach of rules of Natural Justice. It must be remembered that rules of Natural Justice are not embodied rules. They can not be put in a straitjacket. The purpose of rules of Natural Justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing. 33. As noticed earlier, in the present case, the Appellants had adopted a very reasonable and a fair approach. A bona fide enquiry into the fact situation was conducted by a Committee of high ranking officers of the department. In our opinion, the High Court was wholly unjustified in interfering with the decision taken by the Appellants in the peculiar circumstances of the case. It is settled beyond cavil that the decisions taken by the competent authority could be corrected provided it is established that the decision is so perverse that no sensible person, who had applied his mind to the question to be decided could have arrived at it. The aforesaid principle is based on the ground of irrationality and is known as *Wednesbury Principle*. The Court can interfere with a decision, if it is so absurd that no reasonable authority could have taken such a decision. In our opinion, the procedure adopted by the Appellants can not be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision.

36. In view of these observations, we are of the considered opinion that the High Court ought not to have interfered with the decision taken by the Appellants requiring the candidates, who appeared in the cancelled examination, to reappear in the subsequent examination, in order to qualify for regular promotion."

9.7 In the case of *Tanvi Sarwal (Supra)* wherein the allegation of large scale malpractices after investigation by 44 candidates were identified, having regard to the modus operandi put in place, in paras 18, 19, 20 and 23, the Hon"ble Supreme Court has observed and held as under:

"18. As has been noticed herein above, the disclosures in the investigation suggest that the benefit of answer key has been availed by several candidates

taking the examination, by illegal means. Though as on date, 44 such candidates have been identified, having regard to the modus operandi put in place, the numbers of cell phones and other devices used, it is not unlikely that many more candidates have availed such undue advantage, being a part of the overall design and in the process have been unduly benefited qua the other students who had made sincere and genuine endeavours to solve the answer paper on the basis of their devoted preparation and hard labour. In view of the widespread network, that has operated, as the status reports disclose and the admission of the persons arrested including some beneficiary candidates, we are of the opinion, in view of the strong possibilities of identification of other candidates as well involved in such mal practices, that the examination has become a suspect. As it is, the system of examination pursued over the decades, has been accepted by all who are rationale, responsible and sensible, to be an accredited one, for comparative evaluation of the merit and worth of candidates vying for higher academic pursuits. It is thus necessary, for all the role players in the process, to secure and sustain the confidence of the public in general and the student fraternity in particular in the system by its unquestionable trustworthiness. Such a system is endorsed because of its credibility informed with guarantee of fairness, transparency authenticity and sanctity. There cannot be any compromise with these imperatives at any cost.

19. Segregation only of the already 44 identified candidates stated to be the beneficiaries of the unprincipled manoeuvre by withholding their results for the time being, in our comprehension cannot be the solution to the problem that confronts all of us. Not only thereby, if the process is allowed to advance, it would be pushed to a vortex of litigation pertaining thereto in the foreseeable future, the prospects of the candidates would not only remain uncertain and tentative, they would also remain plagued with the prolonged anguish and anxiety if involved in the ordeal of court cases. Acting on this option, would in our estimate, amount to driving knowingly the students, who are not at fault, to an uncertain future with their academic career in jeopardy on many counts. Further, there would also be a lurking possibility of unidentified beneficiary candidates stealing a march over them, on the basis of the advantages availed by them through the underhand dealings as revealed. Having regard to the fact, that the course involved with time would yield the future generations of doctors of the country, who would be in charge of public health, their inherent merit to qualify for taking the course can by no means be compromised.

20. As would be available from the status reports, out of 123 solved answers of a particular code and retrieved from the mobile set of one of the persons arrested i.e. Dr. Bhupender, 102 answers were found correct on a comparison with the answer key provided by the CBSE. As referred to herein above, 358 mobile numbers had been pressed into service and at least 300 vests fitted with electronic devices have been used. Having regard to the uncompromising essentiality of a blemishless process of examination involving public participation, we have no alternative but to hold that the examination involved, suffers from an

infraction of its expected requirement of authenticity and credence. We are conscious of the fact that every examination being conducted by a human agency is likely to suffer from some shortcomings, but deliberate inroads into its framework of the magnitude and the nature, as exhibited, in the present case, demonstrate a deep seated and pervasive impact, which ought not to be disregarded or glossed over, lest it may amount to travesty of a proclaimed mechanism to impartially judge the comparative merit of the candidates partaking therein. If such an examination is saved, merit would be a casualty generating a sense of frustration in the genuine students, with aversion to the concept of examination. The possibility of leaning towards unfair means may also be the ultimate fall out. Even if, one undeserving candidate, a beneficiary of such illegal machination, though undetected is retained in the process it would be in denial of, the claim of more deserving candidates. At the present, the examination stands denuded of its sanctity as it is not possible to be cleansed of all the participating beneficiary candidates with certainty. We are thus, on an overall assessment of the materials on record, left unpersuaded to sustain the examination. We must observe that till this stage of the investigation, no conscious lapse or omission on the part of the Board, contributing to the otherwise appalling mischief has surfaced.

23. We are aware, that the abrogation of the examination, would result in some inconvenience to all concerned and that same extra time would be consumed for holding a fresh examination with renewed efforts therefor. This however, according to us, is the price, the stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavours. It is a collective challenge that all the role-players would have to meet, by rising to the occasion and fulfil the task ahead at the earliest, so as to thwart and abort the deplorable design of a mindless few seeking to hijack the process for selfish gain along with the unscrupulous beneficiaries thereof. Though the Board has taken a plea that having regard to the enormity of the exercise to be undertaken, the same cannot be redone before four months, we would emphasize that this is an occasion where it (the Board) ought to gear up in full all its resources in the right spirit, in coordination with all other institutions that may be involved so as to act in tandem and hold the examination afresh at the earliest.

9.8 Now, we shall consider the decisions of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra); East Coast Railway & Anr. (Supra); Joginder Pal (Supra) and Inderpreet Singh Kahlon (Supra) relied upon by the learned Counsel appearing on behalf of the original applicants.

9.9 Learned Counsel appearing on behalf of the original applicants have relied upon paras 7, 12, 13, 14, 15, 39, 40, 41, 42, 43, 44, 45, 46 of the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra). Learned

Counsel appearing on behalf of the original applicants has also relied upon paras 14 to 18, 20 to 31 of the decision of the Hon''ble Supreme Court in the case of East Coast Railway & Anr. (Supra). Learned Counsel appearing on behalf of the original applicants has also relied upon paras 23, 27, 28, 39 to 44, 46, 50, 52 to 56, 64, 71 to 73, 75, 79, 80, 91, 94, 95, 111, 112, 114, 117, 122, 124, 125, 127, 145 & 146 of the decision of the Hon''ble Supreme Court in the case of Inderpreet Singh Kahlon (Supra). Learned Counsel appearing on behalf of the original applicants has also relied upon paras 5, 7, 9, 10.1 to 10.5, 11, 14, 16, 30 to 36, 38 to 42, 45 to 48 of the decision of the Hon''ble Supreme Court in the case of Joginder Pal (Supra). Learned Counsel appearing on behalf of the original applicants has also relied upon paras 3, 22 to 25, 31 to 34, 36, 38, 39.1 to 39.4 of the decision of the Hon''ble Supreme Court in the case of Jayshree Chamanlal Buddhbhatti (Supra).

9.10 As observed herein above the learned Tribunal has not followed the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) on the ground that the decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) is by a Larger Bench, which is factually incorrect.

9.11 Be that as it may, even on facts also the learned Tribunal has erred in not following and/or considering the decisions of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra) and as such has materially erred in considering and relying upon the decisions of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra). We are of the opinion that in the facts and circumstances of the case the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) shall be applicable with full force to the facts of the case on hand and decision of the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra) may not be applicable to the facts of the case on hand.

While applying the law laid down by the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra), the learned Tribunal has not properly appreciated the fact that in the case before the Hon''ble Supreme Court in the case of Mahipal Singh Tomar (Supra), the allegations were with respect to the large scale irregularity in the placement of selected candidates in different colleges and not with respect to the entire selection process as is in the present case. In the present case as per the Vigilance Report the selection process itself is vitiated and it is found that there is a compromise in the selection process.

9.12 It is required to be noted that even in the case of Mahipal Singh Tomar (Supra) the Hon''ble Supreme Court has carved out an exception to the principles of natural justice that if the placement was secured by undue influence or misrepresentation, then the principles of natural justice would not have been applied (Para 14). Therefore, as such the learned Tribunal has not properly appreciated the distinction in the case of Mahipal Singh Tomar (Supra) and the facts of the case on hand more particularly the allegation of irregularities in the placement of selected candidates in different colleges and the case where the

allegations are with respect to the entire selection process being vitiated, which is there in the present case.

9.13 Even on considering the decision of the Hon''ble Supreme Court in the case of East Coast Railway & Anr. (Supra) and considering the facts in the matter before the Hon''ble Supreme Court and the findings recorded, we are of the opinion that decision of the Hon''ble Supreme Court in the case of East Coast Railway & Anr. (Supra) as such shall not be applicable to the facts of the case on hand more particularly in light of the Vigilance Report having noticed the large scale irregularities in conducting the examination in connivance with the officers of M/s. CMC Limited.

9.14 Considering the facts of the case on hand and the facts in the case before the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra), we are of the opinion that decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra), as such shall be nearer to the facts in the present case and shall be applicable with full force to the facts of the case on hand.

At this stage it is required to be noted that even there are contradictory findings with respect to the supply/nonsupply of the Vigilance Report. As observed herein above on one hand the learned Tribunal has specifically observed and held that the Vigilance Report cannot be given to the original applicants and/or their Counsel, however on the other hand the learned Tribunal has held that the Vigilance Inquiry is in breach of principles of natural justice as no individuals are called.

9.15 In the facts and circumstances of the case narrated herein above, we are of the opinion that the learned Tribunal has materially erred in even observing that the Vigilance Report is in breach of principles of natural justice. Considering the decision of the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra), the learned Tribunal has materially erred in holding that the Vigilance Inquiry/Report and the action of the respondent ? Department in canceling the entire result of the examination relying upon the Vigilance Report is in breach of principles of natural justice. It is required to be noted that as such the learned Tribunal has also observed that as the decision is taken against the mass and with respect to the entire examination and not against the individual and therefore, as such no individual notice was required before taking any decision either canceling the result of the examination and/or even consequent action of terminating their services.

9.16 Even the learned Tribunal has materially erred in observing that as no efforts were made to segregate the tainted and untainted and therefore, the decision to cancel the entire result of the examination has been vitiated. We ourselves have considered the Vigilance Report. We have also noted the number of candidates applied; number of candidates appointed and number of candidates yet to be appointed in each of the circles for which the result of the examination has been ordered to be cancelled. Looking to the large number of candidates and

the findings recorded by the Vigilance Department in its Vigilance Report, we are of the opinion that it is practically not possible to consider the case of each candidate and thereby segregate the tainted and other candidates. As specifically observed in the Vigilance Report large irregularities have been noticed including 34 candidates against whom the initial allegations were made and with connivance of the officers of M/s. CMC Limited. Therefore, having noticed and found that the entire selection process has been compromised and looking to the number of candidates it is not possible to segregate the tainted candidates and other candidates and thereafter when a conscious decision has been taken in a larger public interest to cancel the entire result, the learned Tribunal has materially erred in quashing and setting aside the same on the ground that the same is in violation of principles of natural justice.

At this stage it is required to be noted that as such there are no allegations of any malafides against the Department while canceling the entire result. In the facts and circumstances of the case the decision taken by the Department in canceling the result of the entire examination cannot be said to be arbitrary. The same is based on subjective satisfaction on the basis of the Vigilance Commission Report. Therefore, as such the learned Tribunal has materially erred in interfering with the said decision more particularly when the same was taken in the larger public interest and to maintain the purity of the examination/selection.

9.17 Now, so far as the contention on behalf of the original applicants and even as observed by the learned Tribunal that as the selections were made against 34 candidates only and even the FIR / complaint was made against 34 candidates only, and therefore, all efforts should have been made by the Department to segregate the tainted and other candidates and therefore, the action of the respondent in canceling the entire result of the examination is vitiated is concerned, it is required to be noted that as such it is true that as, as such initial complaint was against successful 34 candidates belonging to few Districts of Western Uttar Pradesh. However, on further investigation it has been found that the other large number of candidates and possibly many others who were declared successful in managing unauthorized access to the key/question papers and/or impersonated and/or have been declared successful by the agency despite defective/invalid OMR sheets. The same is specifically narrated by the Post Master General, Gujarat Circle in his complaint made to the DGP (Crime and Intelligence) and also in the complaint made to the CBI for further investigation. From the Vigilance Report it appears that a large number of aberrations/significant violations of various provisions of agreement/RFP/on the part of the M/s. CMC Limited have been noticed. Therefore, it is noticed that the aforesaid agency was actively involved in compromising the sanctity of the P.A./S.A. examination 201314. Considering the aforesaid facts and circumstances of the case, we are satisfied that as such it is not practically possible to segregate the tainted and other candidates.

9.18 The learned Tribunal has even materially erred in observing that no proper inquiry has been conducted by the Vigilance Department and that action of the Department was in haste in canceling the result and they ought to have waited till the CBI concludes the investigation. By making above observations the learned Tribunal has exceeded its jurisdiction and has acted beyond the scope and ambit of the judicial review. At this stage it is required to be noted that the Inquiry by the Vigilance Department was to prima facie find out the irregularity in conducting the examination which started with the complaint initially against 34 candidates. At that stage as such no opportunity was required to be given against the individuals. After thorough investigation and when it is noticed, large scale irregularities also including 34 candidates against whom initial allegations were made and it has been noticed that the sanctity of the recruitment process has been compromised, the learned Tribunal has materially erred in quashing and setting aside the action of the Department in canceling the entire result of the examination. At this stage it is required to be noted that even the learned Tribunal has also specifically observed after considering the Vigilance Report that on perusal of the report it is found that M/s. CMC Limited committed serious lapses. Having so found and observed, thereafter it was not open for the learned Tribunal to hold that the Vigilance Department had conducted the inquiry without having any regard to the principles of natural justice and hence, perverse. In the facts and circumstances of the case and the stage at which the Vigilance Department was conducting the investigation/inquiry and it was not the case against the individual, the finding recorded by the learned Tribunal that as the investigating section did not take any step to contact any one of the party respondent of any centre and that none of the candidates of the examination were made known as to the allegation in the said complaint, is vitiated. At that stage once the Vigilance Department held the inquiry/investigation, individual notices were not required. Under the circumstances and considering the decision of the Hon"ble Supreme Court in the case of K. Shyam Kumar (Supra) and O. Chakradhar (Supra), the findings recorded by the learned Tribunal that the inquiry conducted by the Vigilance Department is against the principles of natural justice and hence, perverse cannot be sustained.

9.19 Even the finding recorded by the learned Tribunal that the action of the respondent Department in terminating the services of the concerned candidates is in breach of principles of natural justice inasmuch as neither any of the appointed candidates can be confronted with adverse materials available before the Vigilance Division is concerned, it is required to be noted that there also there is a contradictory finding. On one hand the learned Tribunal has specifically observed and held in pars 35 and 36 that if any further particulars found in the complaint are furnished, the persons involved/interested may make attempt to tamper with the available witnesses/evidences which may affect the investigation by the CBI and therefore, the learned Tribunal refrain from furnishing further particulars mentioned in the complaint and on the other hand the learned Tribunal has held that on non-furnishing the adverse material to the appointed

candidates, the same is in breach of principles of natural justice. Thus, the aforesaid finding of the learned Tribunal cannot be sustained. The same is required to be supplied only in a case where only after the investigation by the CBI and when individual actions against them are taken. At this stage and as observed by the Hon''ble Supreme Court in the case of K. Shyam Kumar (Supra) and other decisions referred to herein above at the time when the decision is being taken against mass of the candidates with respect to cancellation of the result, neither the Vigilance Report nor any individual notice is required to be given.

At this stage it is required to be noted that all the candidates whose services have been terminated were on probation and they were appointed pending the complaint and thereafter when after the conscious decision considering the Vigilance Report has been taken to cancel the entire result of the examination having noticed that the sanctity of the selection process has been compromised into large scale irregularities and illegalities committed in connivance with the officers of M/s. CMC Limited and thereafter as a consequence of such decision the services of the appointed candidates who were on probation have been terminated by giving notice pay/notice as per Rules, 1965 and having found the issue Nos.3 and 4 in affirmative, learned Tribunal has materially erred in quashing and setting aside the order of termination, which as such can be said to be a consequence to cancellation of the result of the examination.

9.20 Now, so far as the submission on behalf of the same of the original applicants that some of them either left their services and/or even did not apply for other posts as they were appointed pursuant to the present selection is concerned, it may be true that some hardship might be caused to some of the candidates. However, in view of the findings recorded by the Vigilance Department that the sanctity of the selection process has been compromised because of the large scale malpractice/irregularities committed by many of the candidates in connivance with the officers of M/s. CMC Limited, the result would be inevitable. As observed by the Hon''ble Supreme Court in the aforesaid decision there cannot be any compromise with the sanctity of the selection process and if there is a slightest doubt on the material available on record with respect to malpractice and/or irregularities / illegalities in conducting the examination, the authority will be justified in cancelling the entire list.

10. In view of the above and for the reasons stated above, we are of the opinion that the learned Tribunal has materially erred in exceeding in its jurisdiction in interfering with the decision of the Department in cancelling the entire result of the P.A./S.A. Direct Recruitment Examination 201314 and the consequential action of terminating the services of the appointed candidates solely on the ground that same is in breach of principles of natural justice. In view of the above and for the reasons stated above, we are of the opinion that the learned Tribunal has committed a serious error in quashing and setting aside the action of the Department in cancelling the entire result of the P.A./S.A. Direct

Recruitment Examination 201314 and the consequential action of termination of the appointed candidates who were on probation. At this stage it is required to be noted that out of the total original applications as such so far as Gujarat Circle is concerned, 183 were appointed on probation and rest of the 83 were yet not appointed and they can be said to be in select/waiting list i.e. yet to be appointed.

10.1 In view of the above and for the reasons stated above, all these petitions succeed. Impugned respective judgment and orders passed by the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in respective original applications are hereby quashed and set aside and consequently the action of the Department in canceling the entire result of the P.A./S.A. Direct Recruitment Examination 2013-14 and the consequent action of termination of the appointed candidates is hereby confirmed, in the facts and circumstances of the case. Rule is made absolute to the aforesaid extent in each of the petitions. However, there shall be no order as to costs.