

Mohd. Haroon Bhat and ors. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : Apr-15-2005

Judge : Permod Kohli, J.

Acts : Constitution of Jammu and Kashmir - Section 126; ;[Constitution of India](#) - Article 311

Appeal No. : SWP 14, 324, 384, 2013, 2160 and 2331/03

Appellant : Mohd. Haroon Bhat and ors.

Respondent : State of J and K and ors.

Advocate for Def. : B.S. Slathia, AAG and; Shaista Hakim, Dy. AG

Advocate for Pet/Ap. : Z.A. Shah,; Sunil Sethi and; J.S. Kotwal, Advs.

Disposition : Petition dismissed

Judgement :

Permod Kohli, J.

1. The J&K; Service Selection Recruitment Board invited applications for the posts of Forest Guards/ Forest Protection Force Guards District Doda vide Advertisement Notification No. 3 of 1996 dated 24.12.1996. After conducting physical test and interview of all the eligible candidates who applied in response to

the aforesaid notification, a select list dated 30.4.2000 came to be issued . The State Government on receipt of the aforesaid select list, issued Government Order No. 344 of 2000 dated 24.10.2000 appointing 128 candidates as Forest Protection Force Guards in the pay scale of Rs. 3050-75-3950-80-4500 against the available posts. It is the case of the petitioners that on being appointed , they joined their services and were deputed for undergoing training in Punjab Police Training Academy, Phallour where they completed their training course for six months and were posted in Gama Unit J-8 Doda and Gama Unit J-9 Batote. They performed their duties and were paid their salary upto October, 2002.

2. Even before the appointment could be made, some complaints were made whereupon respondent-5 detected some interpolations in the select list and the issue was referred to the Government. On examination, interpolation was found in case of 11 selectees and their names were deleted from the select list. The selection/appointment came to be challenged by some unsuccessful candidates by filing SWP No. 651/2000 and other connected petitions. All these petitions were disposed of by a common judgment dated 15.4.2002 wherein following directions were issued:

In this situation, these petitions are disposed of with the following directions:

(i) That the Chief Secretary of the State of Jammu and Kashmir would examine or cause to be examined, the preliminary report submitted by the Vigilance Organisation, and take such steps as are required to be taken on the administrative side;

(ii) That as prima facie, there is large scale interpolations in the records and as it may not be possible for this Court to go into the same, and as directions have been given to the Chief Secretary of the State to examine them, let this exercise be completed at the earliest , and preferably , within a period of three months from today;

(iii) So far as appointment of private respondents is concerned, that would naturally depend upon the enquiry to be held. However, it is directed that as an interim measure, the private respondents who stand appointed shall not be paid

their salaries, and the State would not be burdened w.e.f. 1.5.2002. Copy of the order be made available to Shri J.P. Singh, Advocate by the Registry, who would forward the same to the Chief Secretary of the State. It is hoped that remedial measures are taken by the Chief Secretary and the issue is not allowed to be lingered on.

Disposed of accordingly.

3. On the basis of the aforesaid judgment, salary of the appointees was stopped. Petitioners challenged judgment dated 15.4.2002 in LPA(SW) No. 181/2002 titled Mohd. Haroon and Ors. v. State and Ors., which was disposed of on 6.6.2002 with the following order:

Dismissed as withdrawn with liberty to approach the court as and when the period of three months as stipulated in the judgment is over.

4. On expiry of three months, petitioners filed two more writ petitions being SWP No. 2528/2002 titled Gurnam Singh and Ors. v. State and Ors. and SWP No. 2527/2002 titled Kartar Singh and Ors. v. State and Ors. In the aforesaid writ petitions, vide order dated 12.11.2002, a direction was issued for the release of salary of petitioners for the period they have actually worked after 1.5.2002. Another writ petition SWP 2774/2002 titled Mohd. Haroon Bhat and Ors. v. State and Ors. was also filed, wherein a direction dated 28.11.2002 for release of salary was issued. During the pendency of the aforesaid writ petitions, the Government through the General Administration Department issued impugned Government Order No. 8-GAD of 2003 dated 3.1.2003 canceling the selection process and the select list issued by the J&K; Service Selection Recruitment Board vide its communication No. SSB/PA/SECY/352-55/2000 dated 28.4.2000 as also the appointments made consequent upon selection and recommendation made by the Selection Board. A further decision was taken vide impugned order to constitute Special Selection Committee, which shall re-interview all the candidates who participated in the selection process. The new committee was asked to complete the process of selection within a period of one month and make recommendation to the Government against 158 vacancies of Forest Guards /Forest Protection Force Guards in District Doda strictly in accordance with merit and suitability. The

new selection committee was also directed to be fair in selection. It is this order, which has been assailed in the present petitions and its quashment sought with a further relief of allowing petitioners to perform their duties.

5. Even when petitioners were appointed vide order dated 24.10.2000 and 11 candidates were excluded from the select list, those 11 candidates filed writ petition SWP No. 2202/2000, which came to be disposed of on 9.10.2001. While disposing of writ petition, the court accepted that there were some irregularities and interpolations and the matter is being examined. The court accordingly declined the prayer of 11 candidates for their appointment and directed the State to complete the enquiry within a period of three months from the date copy of the order is made available. LPA preferred by the unsuccessful writ petitioners before the Division Bench being LPA(SW) No. 423/2001 came to be disposed of vide judgment dated 9.10.2001. The Appellate Bench while upholding judgment of the writ court, further directed that till the enquiry is completed, no appointment shall be made to the existing posts.

6. Separate replies have been filed by respondent-1 and respondents 2 to 4. The respondents have narrated the sequence of events leading to passing of impugned order:

7. That Advertisement Notice No. 3 of 1996 dated 24.12.1996 was issued by J&K; Service Selection Board whereby 158 posts of Forest Guards were advertised. In response to the aforesaid Advertisement Notice, as many as 9131 applications were received by the District Employment Officer, Doda and a Special Committee was framed by SSRB, Jammu vide its order No. 17 SSR dated 31.3.1997. On the basis of short-listing criteria adopted by Selection Committee, as many as 1714 candidates were finally allowed to participate in the selection process which inter alia includes physical test and interview. The convener of the selection committee submitted the list to the Chairman, SSRB vide Order No. SSRB/LM/99/01 dated 27.2.1999. The final select list was issued on 28.4.2000. In the meanwhile some protests and complaints were received and FIR was registered by the Vigilance Organisation. Interim report submitted by the Vigilance Organisation reveals large scale interpolations in the final select list and in the meanwhile , the selection

process was challenged in SWP No. 651/2000 titled Bhushan Lal and Ors. v. State and Ors., wherein judgment dated 15.4.2002 came to be passed.

8. When the list was received by the Government from the SSRB, respondent-2 was directed by the General Administration Department vide its communication No. FST(NG) Selection/96 dated 26.7.2000 to issue appointment order of the selectees after verification of character and antecedents . However, before the appointment list could be issued, complaint was received by the department as also by Vigilance Organisation regarding tempering of select list and the Government issued another order No. 389-FST of 2000 dated 22-9-2000 and respondent -2 was directed to withhold issuance of appointment letters in respect to 11 candidates , in view of tempering in their cases.

9. As far the impugned order is concerned, the Chief Secretary after examination of the record, pertaining to selection process, has found that selection of 158 Forest Guards/Forest Protection Force Guards in District Doda, is unfair and unjustified and accordingly, impugned order came to be passed.

10. After the arguments were heard, respondents were directed to produce the record namely; vigilance report produced before the court in SWP No. 651/2000, vigilance report submitted to the Chief Secretary, final report relating to FIR No. 60/2001, all cabinet decisions relating to the selection in question, award list and final select list prepared by the Service Selection Recruitment Board.

11. Regarding the enquiry conducted by Vigilance, it is stated that preliminary report has revealed the following interpolations in the select list:

1. Interpolations have been made in respect to 87 candidates in the award list duly attested by Shri D.S. Langeh , Convenor of the selection committee.

2. Out of these, correction in respect to 23 candidates were made in due course in good faith.

3. Out of 64 candidates, marks of 45 candidates were increased, and decreased in case of 19 candidates.

4. 37 candidates out of 45 in whose cases the marks were increased , are shown in the final select list.

5. The marks sheet was again tempered in the office of Chairman, Service Selection Recruitment Board by his P.A. Jagdish Chander.

6. There is tempering in the marks of 21 candidates by increasing the award tally of 12 candidates and decreasing in respect to 9 others.

12. According to vigilance report, selection has been conducted in unfair manner and lost its sanctity. The Vigilance Organisation further observed in its report that these interpolations have been made by the convenor and other members of the selection committee with ulterior motive as a result of which fate of eligible candidates is adversely affected. No reasons have been recorded for making such corrections either in the award sheet or in the forwarding letter. It is disclosed in the report that during investigation, statements of number of candidates have been recorded, which reveal that amount ranging 50- 60 thousand had been demanded as bribe per candidate which was to be paid to the members of the selection committee either directly or through Rash Pal Clerk, Service Selection Board and has been attributed to convenor, Mr. D.S. Langeh . The enquiry further reveals that Jagdish Chander, PA to Chairman, SSRB had access to the award list which was though officially in custody of S. Mohinder Singh, PS to the Chairman , but the same was in common almirah in the personal section and the key of almirah was used to be kept in drawer, as such he managed to make some corrections for consideration. This gentleman hails from village Brashalla, Thathri District Doda and since selection was from the said district large number of persons of his village and adjoining areas approached him seeking favour and he accordingly made interpolations . It is further stated that out of 12 candidates in whose favour the marks were increased , 11 have been able to find place in the select list. Even the statements of some of the unsuccessful candidates recorded by Vigilance show that the P.A. to Chairman, SSRB demanded Rs. 50- 60 thousand for helping them in selection and some of them have paid part payment and having failed to pay balance amount, their names have not been included in the list.

13. Second report, which has been submitted by Vigilance Organisation to the Chief Secretary, who was to examine the same pursuant to the direction of the court in its order dated 15.4.2002. In this report submitted to the Chief Secretary vide No. DGV-FIR-6/2001-J-5289 dated 19-12-2002, the details of interpolations in case of 87 candidates as referred to above, have been reiterated and it is stated that on the basis of tempering of award list, the officials by misusing their official position, increased marks of 45 candidates , besides 11 candidates whose selection has already been cancelled on the basis of cabinet decision.

14. Despite above two reports, surprisingly, the Vigilance Organisation vide its communication No. CV-FIR-6/2001-J- 3376 dated 18.3.2004 from the Administrative Officer for Commissioner of Vigilance , J&K; Jammu to the Senior Superintendent of Police , Vigilance Organisation(Doda-Udhampur) communicated that on legal scrutiny of the case file , some vital short- comings were observed and has been approved for closure for departmental action against the in- service accused in view of the insufficient evidence available in the case. Accordingly, request was made for departmental action. It is relevant to note that no reasons have been given in this report for deviation from its earlier reports.

15. From the award list, it appears that viva- voce marks and other points were originally recorded in the computer print. However, subsequently the changes have been effected by officials as noticed by the Vigilance Organisation. The basis for making such changes, have not been recorded, though the award sheet has been prepared by the members of the committee. However, the changes made, have not been initialed /signed or approved by the selection committee.

16. The issue was examined by the Cabinet in its decision No. 169/15 dated 4.10.2000 in which following decision was taken:

The Cabinet directed that since those candidates who have genuinely been selected should not be made to suffer and those applicants with white fluid over marks shall stand cancelled whereas appointment order of the rest of the selection list shall be issued.

17. It is on the basis of the aforesaid Cabinet decision, that order of removal of 11 candidates from the select list was issued.
18. SWP No. 384/03 titled Mohd. Haroon Bhat and Ors. v. State and Ors. has been preferred by the selectees/appointees, whose selection/appointment has been cancelled vide impugned order.
19. SWP No. 2013/2003 titled Kuldip Kumar and Ors. v. State and Ors. has been filed by five out of 11 candidates, who were earlier excluded from the final select list and consequently denied appointment.
20. SWP No. 324/2004 titled Pervaiz Ahmed v. State and Ors. has been filed by one out of 11 candidates, whose name was excluded from the select list and denied appointment.
21. SWP No. 2160/2003 titled Mohd. Sharief and Ors. v. State and Ors. has been filed by two out of 11 candidates, who were selected but not appointed.
22. SWP No. 2331/2003 titled Karma Samdan v. State of J&K; and Ors. has been preferred again by one out of the 11 candidates, who was excluded from the select list and denied appointment.
23. SWP No. 14/2003 titled Mohd. Haroon Bhat and Ors. v. State and Ors. has been preferred by the candidates who were aggrieved of the impugned Government Order No. 8-GAD of 2003 dated 3,1.2003, whose selection/appointment have been cancelled.
24. CMPs 1137, 1138 and 1139 of 2003 have been filed in SWP No. 384/2003 by unsuccessful candidates, who had earlier filed writ petition SWP No. 651/2000 challenging the selection and now seek impleadment in the aforesaid writ petition.
25. CMP No. 1829/2003 has also been filed in SWP No. 384/03 by ten out of the 11 candidates, who were denied appointment despite selection for impleadment as party respondent. However, vide order dated 6.9.2003, they were allowed to intervene,

26. Writ petitioners in SWP No. 384/2003 and in SWP Nos. 2331/03,2160/03,324/03,2013/03 and 14/2004 are all selectees/appointees. However, writ petitioners in SWP No. 324/2004 and other petitions referred to above though selected but denied appointment on the basis of interpolations in their cases in the award roll, pursuant to Cabinet Decision No. 169/15 dated 4.10.2000. The appointees have challenged impugned order on following grounds:

(i) that the impugned order has been issued without affording an opportunity of being heard to them and is thus, violative of principles of natural justice;

(ii) that petitioners having been validly appointed , have undergone requisite training and serving in the department, the issuance of impugned order, canceling their appointment/selection amounts to termination of their service without holding any enquiry as contemplated under Section 126 of Constitution of J&K;

(iii) that the writ court in its order dated 15.4.2002 while disposing of writ petition, only allowed the Chief Secretary to examine or cause to be examined and submit preliminary report and to take such steps as required to be taken on administrative side. This direction does not confer any right upon the Chief Secretary to cancel the selection or appointment validly made by the competent authority.

27. As far the grievance of petitioners that they have been condemned unheard and the impugned order canceling their appointments has been issued without affording them any opportunity of being heard, it is noticed that all the appointees/selectees were parties in some of the writ petitions disposed of vide judgment dated 15.4.2002 in which the direction was issued to Chief Secretary to examine the matter and pass appropriate orders on administrative side. This order was passed in their presence and they never claimed any further right to be heard after the report is examined by the Chief Secretary. They cannot have grievance at this stage regarding violation of principles of natural justice. In any case, it is not the Chief Secretary who formulated any opinion regarding any individual whose right has been affected or whose explanation was required. In terms of direction of the court dated 15.4,2002, the Chief Secretary was to examine the fairness in selection and take further steps. The Chief Secretary after considering the matter found that the selection was unfair, in view of tempering of record after the

selection process was complete, has recommended passing of the impugned order with the approval of the Chief Minister, as is revealed from record produced before the court. I do not feel that any of the rights of the petitioners has been violated.

28. Regarding the plea of petitioners that impugned order amounts to termination of their services without holding any enquiry and is thus violative of Section 126 of the Constitution of J&K, it is seen that selection of writ petitioners was under challenge in various writ petitions decided vide judgment dated 15.4.2002. All these writ petitions came to be filed in the year 2000. As is evident from order dated 15.4.2002, that at the time of filing of writ petitions, appointment orders had not been issued. Writ petitioners were appointed either during the pendency of writ petitions or assuming that they were appointed prior to that, the fact remains that writ petitioners in SWP No. 384/03 being parties to decision dated 15.4.2002 readily agreed for the mode adopted by the court for determining the validity of their selection and passing of consequential order, if any. That judgment was never challenged by the selectees. It was under the direction of the court that the Chief Secretary examined the validity of the selection and impugned order is consequence thereof. Therefore, the contention of petitioners that it amounts to termination of their service in violation of Section sic (Article) 126 of the Constitution of J&K; read with Article 311 of the [Constitution of India](#), also cannot be accepted.

29. Regarding the competence of the Chief Secretary to pass impugned order, a perusal of the direction contained in order dated 15.4.2002, clearly indicates that the Chief Secretary was required to examine the report of Vigilance Organisation and based upon such examination, he was to take decision on administrative side.

30. Admittedly, selection was under challenge in the writ petitions. So the relief which could be granted by the court i.e. quashment of selection, could also be considered by the Government on administrative side while examining the validity of the selection. The powers having been conferred upon the Chief Secretary by the Court and petitioners being the party to the decision, cannot be permitted to say that order impugned having been passed by the Chief Secretary, is

incompetent. In any case, the order had the approval of the Chief Minister, who is the Government under the Business Rules. There is no infirmity in the impugned order nor the same can be termed as incompetent.

31. Though no specific plea has been raised in the writ petitions, however, both the sides have canvassed that even if the preliminary report of Vigilance is accepted and it is found that there have been some interpolations in the award sheet, the interpolations having been identified, only such persons should be excluded from the select list in whose favour the interpolations have been made and have managed to get berths in the select list. All other candidates who were otherwise meritorious and have been selected on the basis of their merit, which has not been tempered in any manner, should not be made to suffer. This aspect of the matter, needs to be examined.

32. In case *Krishan Yadav and Anr. v. State of Haryana and Ors.* reported in : (1995)IILLJ77SC the Apex Court had occasion to examine the validity of selection of Taxation Inspectors made by the Subordinate Selection Board. A large number of complaints were received in the aforesaid selection and the matter was referred to Central Bureau of Investigation (CBI). On examination of the record by the CBI, it was reported that there are over- writings and interpolations in the selection list and even such of the persons who did not attend the interview, were awarded marks. The Apex Court examined the record and report of the CBI and found various illegalities, irregularities in the selection and interpolations and forgery in the record. A question arose whether to set aside the entire selection or maintain the same in respect to innocent candidates, who claim to be selected on their own merit. After examining the entire gamut, the Apex Court observed as under:

It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trust. Such offices are meant for use and not abuse. From an minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the

path of least resistance stating in view of the destruction of records it was helpless. It should have helped itself. Law is not that powerless.

In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalized for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit., individual innocence has no place as 'Fraud unravels everything.' To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors.

33. In another case *Pritpal Singh v. State of Haryana and Ors.* reported in : AIR 1995 SC414 selection of Assistant Inspectors of Police became subject matter of challenge on various allegations of favouritism, nepotism and fraud etc. Relying upon *Krishan Yadav v. State of Haryana (Supra)*, the Apex Court observed as under:

It is in the public interest that members of the police force should be selected objectively and fairly. The factors that we have enumerated above satisfy us that the selection made by the Board was not objective and fair. It is, therefore, in the public interest that the selections and the appointments made consequent thereon be quashed forthwith.

We appreciate that it may be that there are among those selected some who deserved selection and who will, consequently, suffer as a result of this order. There is, regrettably, considering the state of the selection records, no way in which such men can be identified. The public interest outweighs their interest. The directions that we shall now give shall enable them to compete once again with those who had sought selection with little or no disadvantage as a result of the years that have passed.

The appeals are allowed. The orders of the Division Benches under appeal and the judgment and order of the learned Single Judge dismissing the writ petitions are set aside. The writ petitions are made absolute in the following terms: The

selection made by the Board of Sub- Inspectors of Police consequent upon the advertisement dated 21.1.1988, as also the appointments made by the State of Haryana pursuant thereto are quashed.

34. Mr. Z.A. Shah, learned Counsel appearing for selectees/appointees has vehemently argued that the ratio of the aforesaid judgments has no applications to the facts of the present cases, as the same are distinguishable. According to the learned Counsel, in the present case, the candidates in whose favour interpolations were made, have been identified and therefore, grain can be segregated from chaff. His further contention is that though initially the Vigilance Organisation had reported some irregularities and interpolations in the record of selection, however, subsequently the final report stands submitted and the Vigilance Organisation has directed closure of the case. Therefore, it be presumed that selection made was fair. His further contention is that most of the selectees are innocent and therefore, they cannot be deprived of selection and consequently the appointments which they enjoyed for considerable time and have been removed from the job without considering that they were not parties to any of the frauds.

35. Reliance is placed upon the judgment of the Apex Court in *Union of India and Ors. v. Rajesh P. U., Puthuvalnikathu and Anr.* reported in : AIR 2003 SC4222 In this case, the Apex Court while considering the allegations in respect to selection in question, found that such of the candidates who are beneficiaries of interpolations, had been identified. The court accordingly quashed the selection only in respect to such candidates and directed appointment of other selectees. What was observed by the Apex Court in the aforesaid case, is noticed below:

On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates , filed on our directions-which report itself seems to have been also produced for the perusal of the High Court -- there appears to be no scope for any legitimate grievance against the decision rendered by the High Court . There seems to be no serious

grievance of any malpractices as such in the process of written examination- either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of investigators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer -- sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re- evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee . In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all- pervasive nature which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner , vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation . In short, the competent authority completely misdirected itself in taking

such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

36. Applying the ratio of the aforesaid judgment of the Apex Court, it is necessary to consider certain facts of the present case:

Admittedly, interpolations have been made and according to the report of the Vigilance Organisation submitted to the court as also to the Chief Secretary, as many as 48 candidates in addition to 11 candidates whose appointment was cancelled by the Government, are beneficiaries of increase in their marks by interpolations, though there is increase and decrease in marks of other candidates also. The Vigilance Organisation shockingly closed the case and recommended administrative action against the officials. In this communication dated 18.3.2004, neither earlier two reports submitted to the court and Chief Secretary by the same Organisation, have been disputed or withdrawn nor any reason has been given to disclose what persuaded the Vigilance Organisation to depart from its earlier reports submitted to the court and the Chief Secretary, which is infact the basis for passing of the aforesaid order. Even the Cabinet while taking decision No. 169/15 dated 4.10.2000 confined itself only to 11 cases where fluid was used over the marks. Whereas, admittedly, in addition to 11 candidates, 48 other candidates have been able to secure berth in the select list on the basis of tempering/interpolations in the marks in the award sheet, after the same was signed by all the members, though some of the interpolations are signed by convenor. The Vigilance Organisation in its both the reports submitted, has even referred to certain statements made by some of the candidates and others regarding financial transactions between the candidates and selectors. P.A. to convenor is also reportedly responsible for making some interpolations and most of the candidates in whose favour he changed the marks, have been selected. This is what has been revealed in the enquiry carried out by the Vigilance Organisation. There may be something more which might not have come to light. Even while closing the enquiry, the Vigilance Organisation suggested administrative action against the officials. It is not a case of simple administrative

lapse or non- observance of rules and norms, but it is a case where record has been tempered with ulterior motives of benefiting undeserving and depriving the deserving of their right. According to Vigilance Organisation, even money passed hands to secure selection. Such a matter cannot be looked at as an ordinary run of the mill. It is not a case of selection of few and non- selection of others and vice-versa , but it is a case of faith of a common man in the system, in the organization entrusted with responsibility of making fair selection as also in the courts dealing with the allegations of unfairness in the matter of selection. Had there been tempering to help one or to identified the cases, perhaps the arguments of Mr. Z.A. Shah, learned Counsel could have carried the court. From the perusal of the record, which I examined, there is tempering in award sheets where marks have been increased to help in selection and decreased to deprive some. Assuming that such of the candidates in whose favour the marks have been increased and have been selected, are identified and can be excluded from selection or appointment, what about those in whose case marks have been decreased. Who knows if their original marks are restored, they might be in the select list. Looking from this aspect of the matter, I am not convinced with the proposition put-forth by Mr. Z.A. Shah that selection be maintained partially in respect to all those in whose case, there is no increase of marks. By adopting such approach, such of the candidates in whose case marks have been decreased, have been deprived of their right of fair consideration on the basis of the original merit. From the examination of tempered record, it appears that the marks have been mutilated in such a manner that in some cases it is not possible to find out original marks. If cases of such candidates in whose case marks have been decreased are ignored, it causes injustice to them. Vide the impugned order, by canceling the selection/ appointment, it has been ordered that the Special Selection Committee shall interview all the candidates afresh and make selection again on the basis of their merit in the selection which is supposed to be fair. In such an eventuality, no prejudice can be said to be caused to the selectees / appointees, as they have fair chance of selection, if they come in the merit, as they have to compete only with the applicants who had been earlier considered.

37. In view of the above circumstances, I do not find any merit in the petitions filed by the selectees/appointees and the same are dismissed.

38. In view of the dismissal of the writ petitions of the selectees/appointees including 11 candidates, who were selected but not appointed, no orders are required to be passed in CMP Nos. 1137,1138 and 1139 of 2003.

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