

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: Administrative Law
Semester-IV (Batch: 2015-20)

End Semester Examination: April-May 2017

Date: 5th May, 2017

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Answer any five of the following questions:

Marks

- Q.1 (a) Mr Krishna Raj is working as Assistant Professor of Geography in Mahatma Gandhi Institute of Technology and Science at Gandhinagar, a college affiliated to University of Gandhinagar, established under Gujarat Universities Act. While in service at the institute, after completion of his two years of service, he applied for academic leave for pursuing his Ph.D. Degree from London University. Mahatma Gandhi Institute of Technology and Science granted three years leave for doing Ph.D. After availing academic leave Mr. Krishna Raj went to Scotland and joined with Queen's College of Technology and Management and done his M.Tech. Degree and not the Ph.D. at London University. After the completion of three years leave he went to his institute, Gandhi Institute of Technology and Science, and reported for duties. However, the institute did not allow him to join for duties and issued a dismissal order and terminated him from the service of the Institute. Mr. Krishna Raj Challenged the order before the Gujarat High Court. Decide the Petition. (5+5=10)
- (b) New Commercial Bank of India, Bank of Gujarat and Bharat Bank which were private banks, were amalgamated with Bank of India, Dena Bank and Union Bank of India respectively in terms of separate schemes under Section 45 of Banking Regulation Act, 1949. Pursuant to the schemes, certain employees from three banks before amalgamation were excluded from the employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees an opportunity of being heard. Aggrieved by the decision, the employees approached the Bombay High Court and the Court ordered for a post decisional hearing. Against this decision the employees approached Supreme Court of India. Decide the Appeal.
- Q.2 University of Gandhinagar, a University established by Government of Gujarat issued a prospectus dated 14th December, 2016, and invited application of Medical Graduates for admission to PG Medical Courses. As per the prospectus, a common entrance examination will be held for candidates to select students for the course. Admissions against seats are reserved for the Gujarat Medical Service (GMS) quota and, seats under Open merit category. The prospectus sets out the total number of seats in each course, the seats earmarked for the GMS reserved category and also in respect of open merit. (10)

According to the prospectus, seats available for the PG course in the different disciplines indicate a total number of 150, of which 75 seats were reserved for the All India quota, 30 seats were reserved for the GMS reserved quota and 45 seats were reserved for the open merit category. As per the prospectus, the last date of receipt of application was 14th January, 2016, 5 p.m. The common entrance examination was held as per schedule on 15th February, 2016 and results were declared on 15th March, 2016. Counselling was scheduled for 15th April, 2016 and the academic session was due to commence on 15th May, 2016. Clause 5 of the prospectus provides for the eligibility criteria in respect of the GMS reserved quota, which reads as follows: GMS doctors sponsored by the State Govt., will be eligible to appear in the entrance examination against the reserved seats, if got selected they have to produce NOC issued by the Health Department of the Govt. The conditions for NOCs fixed by the Govt. of Gujarat under Gujarat Medical Education Regulations, 2015 made under Gujarat Health Service Act, 2014, provides that the basic condition for eligibility is three years regular service with successful completion of probation period out of which two years service is essential in rural areas for both reserved and open seats in the case of GMS doctors.

Dr. Sairaj along with other Doctors, appeared in the selection process on the basis of the above criterion and got selected for PG courses as per the merit list published on 15th March, 2016. However, on 19th March, 2016, the Government of Gujarat modified the Regulation and which was circulated on its website. The new regulation changed the eligibility conditions and applied the same to the process of admission which had already been set in motion. The new Criteria provides that MBBS doctors will be eligible for doing Post-Graduate Course after completion of 5 years of regular satisfactory service including 2 years of probation, out of which 3 years service should be in one of the District Hospitals or a Sub-Divisional Hospitals and 2 years in rural area institutions. Only the persons fulfilling this condition will be eligible for getting admission in reserved seat in PG Courses. Aggrieved by this, Dr. Sairaj filed a petition before Gujarat High Court. Decide the dispute.

- Q.3 The Border Security Force (BSF) has an Army Training Institute (ATI) in the District of Gandhinagar. The said ATI is one of the units of the BSF. It has several wings, namely, Administration Wing, Basic Training Center (BTC), Specialist Training School (STS) and Subsidiary Training Center (STC) etc. All the wings of Institute are located in the same premises in Gandhinagar. Mr Deepesh Kumar was a Deputy Commandant in the ATI. The Unit Commandant of ATI happened to be one Mr. Jayaram. On July, 2016 the Mr. Deepesh Kumar was accused of having received gratification from two persons, namely, Mr. Jayesh and Mr. Amit for their recruitment as constables in the BSF. It was alleged that on 16/7/2016 Mr. Jayesh has given Rs.1,00,000/- to Mr. Deepesh Kumar for his recruitment. On 17/7/2016 one Mr. Navjeevan, Deputy Commandant reported to the Commandant of STC, Mr. R.M. Malhotra, that Mr. Jayesh had stated in presence of one Mr. S. Y. Singh that he had brought out a sum of Rs.1,50,000/- from his house out of which he paid a sum of Rs.1,00,000/- for his recruitment and he paid a sum of Rs.50,000/- to Mr. Deepesh Kumar a week prior. One Constable of the Administrative Wing had allegedly come to him to collect money for Mr. Deepesh Kumar. Mr. R. Malhotra, on 17/7/2016 informed Mr. Jayaram that Mr. Deepesh Kumar came to his office and apologized for having taken the money. Mr. Jayaram appointed Mr. R. Malhotra to inquire into the matter. Before the inquiry Mr. Jayesh and Mr. S. Y. Singh were summoned and depositions were taken on 25/07/2016. On 26/07/2016 Mr. Jayaram asked Mr. Deepesh Kumar to meet Mr. R. M. Malhotra at his office on the same day. An alleged confession about the commission of the offence was said to have been made by Mr. Deepesh Kumar before Mr. R. M. Malhotra. Subsequently Unit

Commandant of ATI, Mr. Jayaram found Mr. Deepesh Kumar guilty of the said charges and by an order dated 27/8/2016 he had been dismissed from service. He approached the High Court of Gujarat. Decide.

- Q.4 Government of India, issued a notification dated 26-02-2017 under Section 16 of the Water (Prevention and Control of Pollution) Cess Act and added Hydro Power generating industry to the Schedule of the Act. Indian Electric Corporation filed a petition before a High Court challenging the imposition of cess on the Hydro Power generating industry. It was contended that there had been no valid amendment of Schedule I of the Act and, therefore, no cess could be imposed. Section 16 reads as follows: "16. Power to amend Schedule I. - (1) The Central Government may, by notification in the Official Gazette add to Schedule I any industry having regard to the consumption of water in the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of sub-section (2), be deemed to be amended accordingly. (2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its re-assembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People, and if Parliament makes any modification in the notification is so laid before the House of the People, and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder." The contention of the Petitioner was accepted by the High Court which came to the conclusion that the provisions of Section 16 had not been complied with while purporting to amend Schedule I of the Act and it rejected Central Government contention that the notification has been issued after laying the notification before each House of Parliament. Union of India filed appeal. Decide the Appeal. (10)
- Q.5 Explain the following with case laws. (3+7=10)
- Wednesbury Principle.
 - Irrelevant Consideration and Imposing fetters on discretion as grounds for Judicial Review of administrative action.
- Q.6 The petitioner is employed as head Daftory, Operations department, in the office of the Air India at Madras. He is Muslim by faith. He is married and his wife is living. He wanted to marry again and with this end in mind, he applied for the sanction as contemplated in Regulation 15 of the Standing Orders (Regulations) concerning discipline and appeals, formulated in exercise of the powers conferred by Section 45 of the Air Corporation Act, 1953 (Act 27 of 1953), read with the concerned rules. Regulation 15 reads as follows – "No employee who has a wife living shall contract another marriage without previous sanction of the General Manger, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him. Likewise no female employee of the Corporation shall marry any person who has a wife living without obtaining such previous permission." The petitioner did not succeed in getting the sanction and aggrieved by this, present petition is been filed before the High Court of Madras praying for striking down the Regulation 15. Decide the Petition. (10)
