

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Administrative Law**
Semester-IV (Batch: 2014-19)

End Semester Examination: April-May 2016

Date: 7th May, 2016

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 anything 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 Mr. Raju Singh had been in the service of the State of Uttar Pradesh since 17.05.1985. (10)
During the period 06.01.2011 to 28.04.2015 he was posted as Executive Engineer at Construction Division of Public Works Department (P.W.D.), Rai Barielly. He was served with the charge sheet dated 24.05.2015 under Rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 (hereinafter referred to as 1999 Rules) making serious allegations of misconduct against him. Mr. Raju Singh having been initially selected through the Lok Sewa Ayog, U.P. was appointed as an Assistant Engineer in the Public Works Department on 17.05.1985 in a substantive capacity. In due course, he was promoted as Executive Engineer. In 1999, Rules have been promulgated by the Governor of U.P. in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Rules prescribe detailed procedure to be followed in the matters of enforcing discipline and imposing penalties/punishments against government servants in U.P., in cases of proven misconduct. In the present case, Mr. Raju Singh was suspended on 28.04.2015 prior to the issue of the charge sheet dated 24.05.2015. Mr. Raju Singh made a written request to the inquiry officer, Mr. Sinhal, demanding copies of the documents relied upon in the charge sheet through representation dated 10.06.2015. In spite of the mandate of the 1999 Rules neither the disciplinary authority nor the inquiry officer made the documents available to Mr. Raju Singh rather a reminder was issued to him by the inquiry officer on 15.06.2015 to submit the reply to the charge sheet.
- Apprehending that the inquiry officer may be biased, Mr. Raju Singh without making any reply to the charges submitted a representation on 19.06.2015 to the Government for change of the inquiry officer. This request of Mr. Raju Singh was accepted by the Government by office memo dated 22.09.2015. It later transpired that the inquiry officer, Mr. Sinhal, had already completed the inquiry report on 03.08.2015 whereas the new inquiry officer, Mr. Kahlon was appointed on 22.09.2015. The new inquiry officer decided that the inquiry report dated 03.08.2015 submitted by the former inquiry officer, Mr. Sinhal “seems to be correct” because the delinquent officer should be deemed to have accepted the charges levelled against him in as much as he had not submitted the reply/explanation to the charge sheet. Based on the inquiry report dated 08.04.2016, which merely reiterated the findings in the inquiry report dated 03.08.2015, Mr. Raju Singh was dismissed from service. Dismissal order is challenged before the High Court, decide the dispute.

Q.2 “It is the function of the Legislature to legislate, but if it seeks to give power to the executive in some circumstances, it is not only the right of the legislature, but also the duty, as principal, to see how its agent (executive) carries out the agency entrusted to it. Since it is legislature which delegates legislative power to the administration, it is primarily for it to supervise and control the actual exercise of this power, and ensure against the danger of its objectionable, abusive and unwarranted use by the administration” Analyse this statement with the procedural control of Delegated Legislation. (10)

Q.3 Mr. Rajkishore was appointed as an Associate Professor of Physics in Rohtak University. His services were terminated during the period of probation by an order dated 20.06.2013. Rajkishore filed an application for his appointment as a Reader in the University of Zambia. The Zambia University accepted the application and appointed him in the post of Reader. Rajkishore accepted the said offer of appointment on 04.10.2013. Rajkishore filed an application for his reappointment to the post of an Associate Professor of Rohtak University on 05.10.2013, which was accepted on the same day. The very fact that Rajkishore was appointed on the same day, as on the date of filing of application, evidently no selection process was undergone. He joined the service of the Rohtak University on 05.10.2013. He applied for grant of extra-ordinary leave without pay for a period of two years, in view of his assignment with the Zambia University and the Executive Council of the Rohtak University by a resolution dated 21.11.2013 sanctioned the said request. On expiry of the period of two years, he joined the University again in November, 2015. He thereafter prayed for grant of increments in the pay scale during the period he was on extra-ordinary leave. The Executive Council of Rohtak University amended the Rules on 28.11.2015, however the State Government, when approached refused to grant its approval. However, the Registrar of the University by a letter dated 06.02.2016 conveyed to Rajkishore that the Vice- Chancellor had been pleased to count his extra-ordinary leave period when he had worked with the University of Zambia from 30.11.2013 to 14.09.2015 towards annual increment. (10)

The University was created under the Rohtak University Act, 2005 and Section 31 of the Act provides that “the authorities of the University may make rules consistent with the Act”. The University framed Leave Rules. Rule 26(i) (c) deals with extra-ordinary leave. Rule (i) An employee permanent or temporary may be granted extra ordinary leave by the competent authority. a) When no other leave is admissible; or b) when other leave is admissible. Rule (ii) Extra ordinary leave shall be without pay and allowances. Extraordinary leave shall not count for increment. The Executive Council of Rohtak University however, amended the Rules on 28.11.2015 and inserted Rule 26 (i) (d) extra ordinary leave can be granted to accept an invitation to a teaching post or fellowship or research-cum-teaching post. Provided that the maximum total period for which such leave is granted shall not ordinarily exceed two years. The benefit of increment for a period upto two years of extra- ordinary leave may be allowed for accepting such assignments. It was further provided that provision would take retrospective effect and would be applicable to teaching and non- teaching employees. Employees Federation of Rohtak University Challenged this decision before the High Court. Decide the dispute.

Q.4 Mr. Shiv Raj was appointed as a Youth coordinator of Ghyanchand Yuv Kendra (GYK), an autonomous body operating under the Department of Youth Affairs and Sports, Ministry of Human Resource Development, Government of India. It is a State within the meaning of Article 12 of the Constitution of India. His appointment was with the terms that of one year probation which may be extended if considered necessary and GYK will be at liberty to terminate the services without any notice and without assigning any reasons whatsoever, during the probation period. He allegedly withdrew some amount from the (10)

Government fund and deposited in his personal account. An inquiry in that behalf was conducted behind his back and on the basis of that his service was terminated by the Director General of GYK through his order. Mr. Shiv Raj filed a representation before the authority for reconsideration of his case but authorities did not respond to the representation against this decision writ petition was filed before the Delhi High Court. GYK contested that the charges against Mr. Shiv Raj were proved prima facie and the same charges were also admitted by him. The High Court dismissed the petition against this decision appeal was filed before the Supreme Court. Decide the Appeal.

- Q.5 (a) "We must have a clear conception of the doctrine (of absolute necessity). It is well established that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety...It is often invoked in cases of bias where there is no other authority to judge or decide the issue"- Explain this statement of Chief Justice Ahmadi. (4+3+3=10)
- (b) Explain Wednesbury Principle.
- (c) If any decision is rendered in violation of the principles of natural justice, it is said to be void or voidable. A voidable order is an order which is legal and valid, unless it is quashed by a competent court, that is, it has legal effect upto the time until it is quashed. On the other hand, a void order is no order in the eye of law. It is a still born order; a nullity and void ab initio- Explain this statement with judicial decisions.
- Q.6 Commissioner of Police, Gandhinagar issued a notification and prohibited the movement of Mini Door Cabs (seven seater auto rickshaws). The notification was issued in exercise of the powers conferred upon him under section 21(1) (b) of the Gandhinagr City Police Act. Commissioner of Police, Gandhinagr informed the public, that the movement of 7 seater auto rickshaws are prohibited in Gandhinagar for all the 24 hours. This restriction is imposed on the movement of the 7 seater auto rickshaws for the maintenance of safe and free flow of traffic, prevention of danger, obstruction and inconvenience to the public. (10)
- Section 21(1) (b) of the said Act reads as follows:
- Power to make rules for regulation of traffic and for preservation of order: The Commissioner of City Police, Gandhinagar may, from time to time, make rules not inconsistent with this Act in respect of the following. Such rules shall, in cases of clauses (b) and (c) be subject to the control of the Government and with regard to be remaining clauses; sanction of the government shall be obtained prior to the enforcement of rules.
- (b) regulating traffic of all kinds, in public street or public places, and regulating the use of streets and public places by persons walking, driving, cycling or accompanying or leading cattle with a view to prevent danger, inconvenience or obstruction to the public. Auto rickshaw Drivers Association challenged this notification before Court. Decide.
- Q.7 Department of Health of Kerala invited tenders for supply of the purchase Single Plune Digital Cardiac Cathaterisation Lab for the Govt. Medical College Hospital, Ernakulum (GMCE). Three concerns, namely, Philips, Siemens and Wilmogs submitted their tenders. The sealed tenders were opened by Director of Medical Education and Training (DMET) and were-scrutinised and placed tender papers before the Purchase Sub-Committee constituted by the State. Health Department decided to avail opinion of experts from outside the State and for that purpose decision was taken to select experts and decided to have their opinion taken in the meeting of the State Level Purchase Committee (SLPC). In the SLPC meeting though three nominated experts from outside the State were to attend; only one namely, Dr. U. N. Mehta, Professor and Head of the Department of (10)

Cardiology, All India Institute of Medical Science attended the meeting. The Committee inter alia decided as follows: "It is, therefore, decided that since the Philips System of Cath, Lab is considered to be technically No. 1 and commercially being lower as compared with Siemens, the same may be purchased"

The above matters were examined by the State Government as it was decided to place the matter before another Committee to be constituted, in which at least two outside experts should be present. SLPC conducted another meeting consisting of the Secretary of Health Department, Director of DMET, Heads of the Department of Cardiology of V. S. S. Medical College, Bangalore and M. K. C. G. Medical College, Hyderabad and two Professors of Cardiology of GMCE. SLPC found as follows: "The SLPC in its meeting had made Philips Company technically T-1 and Siemens Company technically T-2. We agree that Philips is T-1 and marginal/superior to Siemens." Subsequently Technical Expert Committee consisting of four outside experts and a host of internal experts met to consider the question of purchase of Cardiac Cath. Lab. In the said meeting the Committee found as follows: "It is seen that Philips satisfies almost all tender specifications with M. R. C., Tube. Siemens Ltd. comes next."

However, the Government decided to place order with Siemens as its equipment was cheaper and maintenance cost of the equipment is cheaper. It was observed that Philips was only marginally superior to Siemens. Aggrieved by this decision former Head of GMCE challenged the decision of the Government before the Court alleging that this decision was made to favour health Minister's son who is a Managing Director of Siemens. Decide the dispute.
