

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Administrative Law**
Semester-II (Batch: 2015-16)

LL.M. End Semester Examination: May-2016

Date: 16th May, 2016

Duration: 3 hours

Max. Marks: 70

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.

	Part-A	Marks
	Answer any two from Q.1 to Q.3. Q.4 is compulsory	
Q.1	“It is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.” Discuss the above proposition in the light of the leading case laws along with your own views.	(7.5)
Q.2	The petitioner voluntarily applied for and obtained Pakistan passport. After obtaining necessary visa, he came to India. After the expiry of the period of visa, he was sought to be deported. He made a representation to the Central Government against the said action also prayed for personal hearing. The Government after examining representation rejected the prayer but without affording personal hearing. Discuss the action of the Central Government and remedies available to the Petitioner in the light of the decided cases along with your own interpretations.	(7.5)
Q.3	A writ of mandamus was sought by the petitioner directing the Government to promote him. A Single Judge allowed the petition ordering the authorities to promote the petitioner <i>forthwith</i> . But the order was set aside by the Division Bench. After two years, a fresh petition was filed for payment of salary and other benefits in the terms of the judgment of the single judge. It was dismissed by the single judge. The order was challenged in appeal which was heard by a Division Bench to which one member was a judge who had allowed the earlier petition. The appeal was allowed and certain reliefs were granted. The State has approached the Supreme Court. In the light of the above mentioned fact discuss the following: (a) What are the possible contentions of both the parties? (b) Which principle of natural justice be applied? (c) Clearly give the reasons for the application of a particular principle of natural justice.	(7.5)
Q.4	Write short note on the following: (a) Ombudsman (b) Central Vigilance Commission	(5+5= 10)

Part-B

- Q.5 “Discretion is a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, equity and colorable glosses and pretences and not to do according to their wills and private affections.” --- *Justice Coke* (8.5)
- In view of this, discuss the various grounds on which the court will interfere with the discretionary power exercised by the administration.
- Q.6 “Nothing is more remarkable in our present social and administrative arrangements than the proliferation of tribunals of many different kinds. There is scarcely a new statute of social or economic complexion which does not add to the number”. --- *Sir C.K. Allen* (8.5)
- In view of this, critically analyze the relevant issues discussed in *Chandra Kumar v Union of India*, AIR 1997 SC 1125.
- Q.7 Write short note on **any two** of the following: (2x4=08)
- Doctrines of legitimate expectation
 - Wednesbury's principles
 - Due process of law & procedure established by law
 - Doctrines of public accountability

Part-C

Answer **any two** of the following:

- Q.8 Central Government issued a notification dated 17-02-2016 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. Indus Electric Company (IEC) filed a petition before the 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: “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.” (10)
- The contention of the IEC was accepted by the High Court and 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.

Q.9 Comment on the Advisory opinion in *Re Delhi Laws Act*, AIR 1951 SC 332 and identify (10)
essential legislative functions based on various judicial decisions.

Q.10 Ms. Divya Darshini was appointed as Block Development officer by the Agricultural (10)
Development Board, Gandhinagar, by an appointment letter dated 14.5.2009, and was confirmed in that post on 13.05.2010. The conditions of service of the employees of the Agricultural Development Board, a statutory board, were governed by the provisions of the Gujarat Agricultural Market Development Act and Rules made there under. At the time of appointment, the service of Ms. Divya Darshini was not transferable as per the provisions of the Rules as then prevailing, Gujarat Agricultural Market Development Rules. Her appointment letter also did not include any condition for transfer from one Board to another. By a notification dated 27.01.2011, the Rules were amended and a new rule, Rule 5-C was added based on the power under S.47 Gujarat Agricultural Market Development Act. The new rule provides for the transfer of the services of the employees of the Agricultural Development Board from one post in one Board to another post in another Board within the State. Under the provisions of the Rules, Ms. Divya Darshini was transferred to Agricultural Development Board, Rajkot. Aggrieved by the order of transfer passed under Rule 5-C, Ms. Divya Darshini filed a writ petition in the High Court challenging the validity of the order of transfer. Decide the Petition

Relevant Provisions:

Section 47 of Gujarat Agricultural Market Development Act: - Power to make Rules: (1) The State Government may after previous publication, make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: (a) the appointment, supervision, suspension, removal, dismissal and punishment of servants of Boards;

Rule 5-C Gujarat Agricultural Market Development Rules reads as follows:

Rule 5-C (1).The service of a servant shall be transferable from one post in one Board to another post in another Board. Provided the posts in both the Boards are similar and carry the same scales of pay.

(2) Subject to such general directions as the State Government may issue from time to time, the Principal Secretary, Agricultural Department, or such other authority as may be authorised by the State Government in this behalf, shall be the competent authority to transfer a servant under this rule.

(3) A servant on transfer under sub-rule (1) from one Board to another may, for the purpose of determination of seniority and eligibility for promotion opt: (i) To be governed by the conditions applicable in this behalf to the servants of the Board from which he has been transferred, transferor Board; (ii) To be governed by the conditions applicable in this behalf to the servants of the Board to which he has been transferred, transferee Board, Provided that where a servant does not opt under this rule within thirty days from the date of assumption of charge in the transferee Board, he shall, for purposes of promotion and seniority, be governed by the conditions in application in this behalf to the servants of the transferor Board .

(4) Save as provided in sub-rule (3), the terms and conditions of service of a servant transferred under this rule shall be deemed to be these applicable to the servants of the transferee Board.

(5) Where the servant opts under clause (ii) of sub rule (3), the service put in by him under the transferor Board before his transfer shall be deemed to be service under the transferee Board.
