

**Pawan Kumar Singh and ors. Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Dec-08-2008

**Reported in :** 2009(1)AWC391; [2008(119)FLR1180]

**Judge :** D.P. Singh, J.

**Appellant :** Pawan Kumar Singh and ors.

**Respondent :** State of U.P. and ors.

**Disposition :** Petition allowed

**Judgement :**

D.P. Singh, J.

1. Heard Sri R. N. Singh, Sri Ashok Khare, Sri S.M.A. Kazmi learned senior advocates assisted by their instructing counsels ; Sri P. Section Baghel ; Sri R. B. Singhal and Sri Vijai Gautam, learned Counsel appearing for the petitioners in these identical writ petitions challenging cancellation of appointments as constables in the Civil Police, Provincial Armed Constabulary and in the Wireless Wing of the Police.

2. Heard Sri V.B. Upadhayay, learned senior advocate appearing as a special counsel for the State of U. P. assisted by Sri M.C. Chaturvedi, learned chief standing counsel alongwith other standing counsels.

3. Both the parties agree that the issues involved in these cases are identical in nature and can be heard together and disposed of accordingly. For the sake of convenience, with the consent of parties the present writ petition is being treated as the leading petition.

4. These bunch of writ petitions filed under Article 226 of the Constitution of India challenge mass cancellation of recruitments to the post of Constables in Civil Police and Provincial Armed Constabulary (hereinafter referred to as P.A.C.). The cancellation of selection to different posts in the Wireless department of the Police have also been challenged.

5. The recruitment to the posts of Constables in Civil Police and P.A.C are not governed by any statutory rules and all recruitments till date have been carried out on the strength of executive orders and circulars issued by the Government and the Police Headquarters. The recruitments in question have been made under notifications dated 19.5.1998 as amended on 8.6.1998, 10.8.1998 and 8.7.2004. These executive orders were supplemented by instructions dated 6.2.2005, 10.4.2006, 2.7.2006 and 23.9.2006 of the Police Headquarters. However, the recruitment to the Wireless wing is governed by U. P. Police Radio Adhinasthya Seva Niyamawali, 1982 as amended in 2005. These executive instructions and Rules for recruitment provide for inviting applications from eligible candidates through newspaper notifications and for holding physical, written and interview tests.

6. In pursuance thereof advertisements dated 6.1.2005/21.1.2005, 23.7.2005, 1.9.2006, etc. were issued

inviting applications for appointment to the aforesaid posts. Lakhs of candidates applied for various posts. The recruitments were conducted by different Recruitment Boards at different cities. For the post of Constables in Civil Police, first recruitment was held at 15 different centres on 17.2.2005 recruiting 6,091 constables. The second recruitment in the Civil Police were conducted in 16 centres recruiting 5296 constables on 24.4.2006 and third recruitment was conducted on 6.9.2006 at 10 different centres recruiting 6,237 constables. The recruitment to P.A.C. was held on various dates in 2006 at 10 different recruitment centres recruiting about 3,380 constables. Likewise, 12,028 candidates were selected for 1,086 posts of Radio Sahayak Parichhak ; 46 posts of Radio Anurakshak Adhikari and 96 posts of Karmshala Karamchart in the Wireless department of the Police.

7. In accordance with the process of selection as provided for in the instructions, the selection was held in three stages. At the threshold were the physical measurement and physical tests followed by written test and then the interview. The physicals were for 100 marks, written of 50 marks while interview was of 20 marks. A candidate, who secured at least 50% in the physical, was allowed to appear for the written examination. All those candidates who secured at least 33% in the written examination were called for interview which did not have any minimum qualifying marks. All the petitioners after passing through the three stage examinations were selected and assigned different training centres and more than majority of them, after successful completion of their training, were inducted in the regular force where they worked to the satisfaction of their superiors.

8. This entire recruitment exercise was carried out by the Government headed by Sri Mulayam Singh Yadav of the Samajwadi Party as Chief Minister.

9. In the fresh elections held in the State of U. P. in May, 2007, Bahujan Samaj Party came to power and a new Government headed by Chief Minister Kumari Mayawati assumed charge on 13.5.2007.

10. Immediately, within a fortnight of the formation of the new Government, three complaints were made by three different newly elected Members of Legislative Assembly belonging to the Bahujan Samaj Party. Sri Mohammad Irshad Khan, M.L.A. from Sarojni Nagar, Lucknow made a complaint on 14.5.2007 addressed to the Chief Minister alleging that the then Additional Director General of Police, Sri B.K. Bhalla in connivance with the then P.W.D. Minister Sri Shivpal Singh Yadav, who happened to be the brother of the Chief Minister, had recruited candidates to various posts in Wireless Department of the Police on extraneous and monetary consideration. It was closely followed by a second complaint dated 17.5.2007 and a third one dated 28.5.2007, made by Sri R.P. Jaiswal, M.L.A. from Barhaj in Deoria and Sri Amresh Shukla, M.L.A. from Ram Nagar in Barabanki respectively. It was alleged in these two complaints that the recruitments to the posts of constable in Civil Police, in P.A.C. and the Wireless Department were done for extraneous and monetary consideration. The Secretary to the Chief Minister, Sri Vijai Singh, endorsed the first complaint to the Principal Secretary (Home) on 7.6.2007 'for necessary action according to rules'. The Secretary (Home) in its turn referred it to the Director General of Police with his endorsement dated 11.6.2007 '/or necessary action'. Likewise, the other two complaints were also forwarded to the Director General of Police with similar notings.

11. The Director General of Police (for the sake of brevity, hereinafter referred to as D.G.P.) through his order dated 13.6.2007 constituted a four member Enquiry Committee consisting of Sri Javed Akhta, Deputy Inspector General of Police (Establishment) (hereinafter referred to as D.I.G.) ; Sri Vijai Kumar, D.I.G., Allahabad Zone ; Sri Avinash Chandra, D.I.G., Bareilly Zone and headed by Sri Shailja Kant Mishra, Additional Director General of Police (hereinafter referred to as 'Mishra Committee') and forwarded the aforesaid three letters of the legislators to enquire and submit report in regard to the corruption, discrimination and violation of the norms set for selection.

12. On the very next day, t.e., on 14.6.2007, Sri Shailja Kant Mishra wrote a letter to the D.G.P. requesting him to nominate Sri Sul Khan Singh, Inspector General posted at Lucknow to assist in the enquiry to ensure its continuity. In pursuance thereof, the D.G.P. vide order dated 19.6.2007 allowed the Mishra Committee to take

the assistance of Sri Sul Khan Singh, Inspector General of Police, P.A.C. Headquarter, Lucknow. Similarly, Sri Aditya Mishra, D.I.G. at D.G.P. Headquarter ; Sri Rajiv Sabharwal, Superintendent of Police, Sri Ram Singh, D.I.G. ; Sri Sanjay Singhal, Commandant, 6th Battalion P.A.C. ; Sri Brij Bhushan, Commandant, 8th Battalion P.A.C. ; Sri Rajiv Krishna, Commandant, 35th Battalion P.A.C. and Sri R. P. Singh, Commandant, 12th Battalion P.A.C. were also nominated to assist the Mishra Committee by different orders.

13. The Mishra Committee issued advertisements in daily newspapers across the State, soliciting complaints against the recruitments. In response thereto, several unsuccessful candidates or their guardians lodged complaints through telephones and letters complaining that candidates with forged mark sheets, caste certificates and also those who did not possess the requisite physical measurement or age had been selected.

14. The individual members of the Mishra Committee in tandem with the aforesaid nominated officers conducted the enquiries of different recruitment centres and after scrutinizing the records forwarded it to the Chairman through Inspector General of Police, Sri Sul Khan Singh whereafter Sri Shailja Kant Mishra alongwith others submitted 51 reports for different Recruitment Boards to the D.G.P. recommending cancellation of all the recruitments except with regard to the first recruitment at Meerut, Badaun, Sonbhadra, Azamgarh and Deoria and the second recruitment at Mainpuri, Saharanpur, Azamgarh and Sitapur. It also recommended departmental and criminal action against the Chairman and members of the indicted Recruitment Boards. Further, it recommended another enquiry committee to enquire the allegation of corruption. The D.G.P. thereafter forwarded them to the State Government on various dates.

15. The State Government acting upon the above recommendations, cancelled the recruitments and consequently the appointments of more than 18,700 personnels vide orders dated 11.9.2007, 18.9.2007 and 30.9.2007. Simultaneously, by even dated orders, the Government suspended the respective Chairmen and members of the indicted Recruitment Boards in contemplation of departmental enquiries on the strength of the reports.

16. None of the petitioners were noticed or involved in this enquiry or heard at any time before or after their appointments were cancelled.

17. A large number, in this bunch, were blind petitions with very sketchy and vague allegations, obviously because they were neither involved in the enquiry nor the copy of the reports or the resultant Government order was supplied to them. In fact the reports were also not part of the counter-affidavit, but during arguments they were allowed to peruse them and copies thereof was also given to some of them. Therefore, during the course of arguments, in the interest of justice, orders were passed for production of records or for filing them to ensure that neither the petitioners nor the State suffer due to lack of pleadings on both sides.

18. Several arguments were advanced on behalf of the petitioners, but only those arguments have been considered which, in the opinion of the Court are pivotal to the facts of this case.

19. It is urged on behalf of the petitioners that neither the D.G.P. had any authority to order any enquiry nor in fact there was any material to justify it and it was a colourable exercise of power. It is also, urged that the notings which formed the basis of the order of the D.G.P. ordering enquiry, was not an order of the State Government as envisaged under Article 166 and the Rules of Business framed thereunder. It is also urged that the constitution of Mishra Committee itself was vitiated due to inclusion of Sri Shailja Kant Mishra and Sri Javed Akhtar, who were themselves part of the recruitment process.

20. Before dealing with the arguments, it would be appropriate to consider the nature of allegations made in the three complaints which form the basis of initiation of the enquiry by the Mishra Committee.

21. The first complaint was by Sri Mohammad Irshad Khan, M.L.A. from Sarojni Nagar, Lucknow dated 14.5.2007. The complaint alleges that Sri B. K. Bhalla, who was the A.D.G. in the Wireless Department of the Police was very close to Sri Shivpal Singh Yadav, the erstwhile Minister and had accumulated crores of rupees

as bribe for making selection in the Wireless Department on the post of R.M.O., Operator, R.S.O. and Messengers and from this ill-got money, he had also silenced Sri Shivpal Singh Yadav and since the new Government has promised a clean administration, an enquiry be held into the allegations and the officers be punished.

22. In the second complaint made by Sri R. P. Jaiswal, M.L.A. from Barhaji in Deoria dated 17.5.2007, it was alleged that Shivpal Singh Yadav, erstwhile P.W.D. Minister after taking Rs. 2 to 3 crores as illegal gratification from the candidates, got them selected in Civil Police, P.A.C. and Wireless Department such appointees cannot act fairly. It named Sri Shailendra Pratap Singh, D.I.G., Sri V.K. Agrawal, D.I.G., Sri B.B. Bakshi, D.I.G., Sri Malkhan Singh, D.I.G. Sri R.N. Yadav D.I.G., Sri Brashpatimani Tripathi, D.I.G., Sri A.D. Mishra, D.I.G., Sri S.K. Mathur, D.I.G., Sri Ramendra Vikram Singh, D.I.G., Sri Akhlesh Mehrotra, D.I.G., Sri Mukul Goel, D.I.G. and Sri B.K. Bhalla, A.D.G., who helped in the selection. It further alleged that candidates of one caste have been recruited through the aforesaid means which can be found out through an enquiry, which in turn would help thousands of unemployed youths.

23. In the third complaint dated 28.5.2007 filed by Sri Amresh Shukla, M.L.A. from Ram Nagar in Barabanki, it is alleged that during the Government of Samajwadi Party serious irregularities and corruption were practised in the recruitments of Civil Police, P.A.C and Wireless Department of the Police where ineligible candidates were recruited especially of one particular caste. It refers to the recruitment made by Sri B.B. Bakshi, who chaired the recruitment process in Gorakhpur in 2006 and was also the Chairman of the recruitment of P.A.C in Gorakhpur. It further alleged that in the ten recruitment centres Sri Shailendra Pratap Singh, Sri B.B. Bakshi, Sri D.S. Chaudhary, Sri S.K. Mathur, Sri R.N. Yadav, Sri Ramendra Vikram Singh, Sri A.D. Mishra, Sri Chhavi Nath Singh, Sri Akhlesh Mehrotra, Sri Mukul Goel, Sri B.M. Tripathi and Sri Malkhan Singh Yadav, all D.I.Gs. were the Chairmen, who after taking bribe had conducted the recruitment and those six thousand recruits, who were undergoing training could be examined at the Training Centre itself.

24. There can be no doubt that the Government is obliged where complaint is made of large scale fraud or illegalities in a selection to enquire for sustaining purity of administration and transparency. But in the present case the State Government merely forwarded the complaints to the D.G.P. for necessary action. The Director-General of Police, being the principal officer of the department acting upon the complaints constituted the committee and ordered the enquiry. The complaints made by peoples representatives was sufficient material to enable him to reach the aforesaid conclusion. Mere forwarding the complaints by the State Government need not comply with the rules of business as the D.G.P. on receipt of the complaints even directly could also have ordered the enquiry. No doubt, it is true that the respondents have failed to point out any statutory provision under which the enquiry could be ordered but the nature of the complaints was such that the D.G.P. cannot be faulted to have ordered the enquiry. It was not a statutory but an administrative enquiry to prima facie find out the truth of the allegations levelled in the three complaints.

25. In years by gone the initial exercise of the Courts was first to find out the nature of the order, whether it is an administrative or quasi-judicial order and then to proceed to apply the principles of natural justice. The Apex Court for the first time in the case of State of Orissa v. Dr. (Ms.) Bina Pani Dei AIR 1967 SC 1265, broke free from the necessity to examine nature of the order. It held that even an administrative order or decision involving civil consequences, has to abide by the rules of natural justice. The Constitution Bench in the famous case of A. K. Kraipak v. Union of India : [1970]1SCR457 , blunted it further to near extinction. It found that:

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a Judge in his own cause (Nemo debet esse Judex proprise causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith without bias and not arbitrarily

or unreasonably.

and it went on to hold:

If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

26. Fair play in action is the soul of natural justice which has been defined as 'quintessence of the process of justice' inspired and guided by it as held by the Apex Court in the case of *Maneka Gandhi v. Union of India and Ors.* : [1978]2SCR621 .

27. In *K. I. Shephard v. Union of India* : (1988)ILLJ162SC , it further widened its scope holding that;

Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities.

28. The Courts in India, over the years, have equated the principles of natural justice with fairness in action. The effort is not so much to act judicially but for acting fairly, justly and reasonably. In *D. K. Yadav v. J.M.A. Industries* : (1993)ILLJ696SC , the Apex Court observed that the procedure adopted for arriving at a decision must be fair, reasonable and just. More so, when it affects citizens civil life. But in public interest, though opportunity may not be necessary, like in case of compulsory retirement, but yet it can be questioned on the ground that it is based upon no evidence or that it is unjust and unfair.

29. The Apex Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* AIR 2001 SC 24 : 2001 (1) AWC 83 (SC), was considering a question of bias and application of the principles of natural justice, and quoting with approval several decisions, it went on to hold:

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Straitjacket formula cannot be made applicable but compliance of the doctrine is solely dependant upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance of the doctrine, the law courts in that event ought to set right the wrong inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact, the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a Governmental action.

30. In *Canara Bank v. v. K. Awasthy* : (2005)ILLJ461SC , the Apex Court noted the changing concept of natural justice and held:

Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values.

31. The Supreme Court has gradually expanded the concept of natural justice and recently, while considering

large number of decisions, in *Dev Dutt v. Union of India and Ors.* 2008 AIR SCW 3486 : 2008 (3) AWC 2697 (SC), after reiterating that the rules of natural justice are flexible, it gave an indication how to proceed in such cases:

The question to be asked in every case to determine whether the rules of natural justice have been followed is, have the authorities acted fairly

And it went on to hold in paragraph 33 that:

Natural justice has an expanding content and is not stagnant. It is, therefore, open to the Court to develop new principle of natural justice in appropriate cases.

32. More recently in the case of *M/s. Nagarjuna Construction Company Ltd. v. Government of Andhra Pradesh* 2008 (71) AIC 14, after finding that the rules of natural justice are intended to prevent the authorities from doing injustice ; it went on to hold that even non-pecuniary damages tantamount to 'civil consequences' in the following words in paragraph 39:

Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

33. This enquiry and the consequential reports have led to the cancellation of the recruitment and appointment of the petitioners and the order which set it in motion was to enquire into allegations of 'corruption, discrimination and violation of the norms of selection'. Obviously, it not only has deprived the appointees of their jobs but has also caused non-pecuniary damage in the nature of their reputation. This enquiry and its report has to be tested at the altar of fairness and its justness.

34. Let us first examine the composition of the Enquiry Committee.

35. The Police Headquarters vide its order dated 2.7.2006 mandated that the entire records with regard to recruitments of Constables in P.A.C. in respect to the centres falling in the Eastern Zone be submitted to the Inspector General, P.A.C, Eastern Zone. The Inspector General was further directed to scrutinize the records relating to physicals, written tests and to ensure that the recruitments were fair and then to submit a report to the Additional Director General, P.A.C.. At the relevant time of recruitment, Sri Shailja Kant Mishra was himself the Inspector General of Police, Eastern Zone and was obliged to have scrutinised the recruitments of that zone. Similarly, Sri Javed Akhtar was the Chairman of the Recruitment Board for the second recruitment to Civil Police at Sitapur. The necessity to act fairly and justly implies in it also the requirement of appearing to be fair and just. There is absolutely nothing on record to show that before constituting the enquiry committee, the D.G.P. applied its mind to the aforesaid aspect. It is also not the case of the respondents that due to necessity, legal or otherwise, both had to be included in the enquiry committee. More so, when the recruitments made under the Chairmanship of Sri Javed Akhtar have been cleared though identical discrepancies which were found in the other Boards where the recruitments have been cancelled. Though, an explanation has been given in the affidavit filed by Sri Sul Khan Singh that the records of the recruitments of the Eastern Zone were sent to Sri Mishra but before it could be scrutinized, it was recalled by some subordinate authority. In the opinion of the Court, this is mere improvement during the argument. No doubt, Sri S.K. Mishra with regard to the inclusion of Sri Javed Akhtar so far as scrutiny of the recruitment at Sitapur is concerned, had sought constitution of another committee but the request was turned down by the D.G.P. with the direction that the remaining members may scrutinize the records of that recruitment centre.

36. The requirement of fairness demands that the body which has to enquire or decide on a issue which may affect individual right, the character of such body should be above board. Official bias is likely to arise when the person enquiring into a matter has a previous or personal knowledge of the material facts of the case before him by virtue of his dealing with those facts in some other capacity or context. The possibility of

predisposition or prior inclinations hovering over the mind of such a person into the matter, cannot always be ruled out. However, to vitiate such an enquiry it would be necessary to show a case of reasonable probability that the report was less than fair. But, there is an exception to this rule in the nature of doctrine of necessity when either under law or in certain exacting circumstances, but for the said person none else can be asked to conduct the enquiry. The fairness of the report would be commented upon later in this judgment, but, the necessity of inclusion of the two individuals in the enquiry has not been demonstrated before the Court. The State or D.G.P. has a right to nominate anyone to conduct an enquiry but, in the present facts, there is no reason forthcoming why the two individuals were involved in the enquiry though several other officers were available. In fact, the D.G.P. at the time of constituting the Mishra Committee appears to have been oblivious of the fact that Shailja Kant Mishra and Mohd. Javed Akhtar were a part of the recruitment process. This fact is apparent from the minutes of the meeting held under the Chairmanship of the D.G.P. on 31.7.2007 where it was provided that any officer who was part of the recruitment process in the last three years should not be allowed even to assist the Mishra Committee in the enquiry. Thus, it can safely be deduced that the D.G.P. without applying his mind constituted the four member Mishra Committee out of which at least two were part of the recruitment process and asking them to enquire into the process of which they had personal knowledge in their capacity as members of the recruitment process and, therefore, it can be said that the composition of the Mishra Committee itself was less than fair and vitiated.

37. It has also been urged that neither the reports nor the recommendations are of the 'Mishra Committee' appointed to enquire into the allegations and thus any action based on it is vitiated.

38. Faced with this argument, the State was asked by an order dated 22.1.2008 to disclose the correct facts. In pursuance therefore, the Principal Secretary (Home) filed a supplementary counter-affidavit on 5.2.2008 stating that due to enormity of the enquiry, other persons were also appointed and the enquiry committee was enlarged by various orders dated 19.6.2007, 30.6.2007, etc. and the said orders were thereafter brought on record through another affidavit of Principal Secretary (Home). However, none of the orders had enlarged the composition of the Mishra Committee but it only directed certain nominated officers to give assistance to the Committee.

39. The impugned orders are based on 51 reports which have been numbered as Enquiry Report Nos. 1 to 51. However, it would be evident from the following chart that except for report Nos. 1 and 2, which are signed by all the members of the Mishra Committee, report Nos. 3 to 51 have been signed either only by Sri Shailja Kant Mishra together with officers deputed to 'assist' the Committee or by one other member of the Mishra Committee:

Report Nos.

Signed by

1 and 2

S./Shr Shailja Kant Mishra, Mohd, Javed Akhtar, Vijay Kumar and Avlnash Chandra.

3, 13, 15 and 30

S./Shri Shailja Kant Mishra, Sulkhan Singh and Adltya Mishra.

4, 17, 18, 44, 48 and 51

S./Shri Shailja Kant Mishra, Sulkhan Singh and Rajiv Sabarval

5, 21, 32, 33, 43 and 47

S./Shri Shailja Kant Mishra, Sulkhan Singh and Mohd. Javed Akhtar.

6, 9, 10, 24 and 33

S./Shri Shailja Kant Mishra,Sulkhan Singh and Vijai Kumar.

7, 8, 14, 20 and 35

S./Shri Shailja Kant Mishra,Sulkhan Singh and Ram Singh.

11,12,25,28 and 38

S./Shri Shailja Kant Mishra,Sulkhan Singh and Avinash Chandra.

16, 26, 27 and 45

S./Shri Shailja Kant Mishra,Sulkhan Singh and Rajiv Krishna.

22, 23, 40 and 41

S./Shri Shailja Kant Mishra,Sulkhan Singh and Brij Bhushan.

31

S./Sri Shailja Kant Mishra andVijay Kumar.

36, 37 and 42

S./Shri Shailja Kant Mishra,Sulkhan Singh and R.P. Singh.

38

S./Shri Shailja Kant Mishra,Sulkhan Singh and Avinash Chandra.

46 and 50

S./Shri Shailja Kant Mishra,Sulkhan Singh and Ramit Sharma.

49

S./Shri Shailja Kant Mishraand Avinash Chandra.

29

S./Sri Shailja Kant Mishra andAditya Mishra.

40. Neither the Committee constituted under the order dated 13.6.2007 nor its Chairman had any delegated authority to enlarge the Committee by inclusion of new members though it was authorized to take assistance of other officers. In fact on the request of Sri Mishra vide his letter dated 14.6.2007, the D.G.P. nominated Sri Sulkhan Singh, Inspector General of Police only to assist the Mishra Committee by an order dated 19.6.2007 and did not nominate him as its member. This fact is also evident from a perusal of the circular of the D.G.P. dated 29.6.2007 for re-examination height, verification of certificates etc. of all the selected candidates. It would be useful to quote the relevant portion as below (as loosely translated in English):

On the basis of serious allegations contained in letters of complaint received with the Government, an enquiry is required in respect of certain recruitments. List of the recruitments to be enquired into and re-examined is enclosed as enclosure 'Ka'.

For the enquiry into the said recruitment the Enquiry Committee as mentioned below has already been constituted:

1. Sri Shallja Kant Mishra ----- Chairman. Additional Director General of Police, Inter State Border Force/ Special Task Force, Lucknow. 2. Sri Javed Akhtar ----- Member. Deputy Inspector General of Police (Establishment) U. P. Police Headquarters, Allahabad. 3. Sri Vijay Kumar, ----- Member. Deputy Inspector General of Police, Allahabad Region, Allahabad. 4. Sri Avinash Chandra ----- Member. Deputy Inspector General of Police, Bareilly Region, Bareilly.

No other order or document has been brought on record with regard to assignment or nomination of Sri Sul Khan Singh. It is thus apparent that Sul Khan Singh was never nominated as a member of the Mishra Committee, yet, he has signed 41 of the 51 reports.

41. No doubt Shri Mishra vide his letter dated 28.6.2007 addressed to the D.G.P. had requested to nominate Shri Aditya Mishra, D.I.G., Shri R.K. Srivastava, Superintendent of Police, Shri D.K. Rai, Additional Superintendent of Police, Miss Sadhna Goswami, Additional Superintendent of Police and Smt. Pragya Mishra in the Enquiry Committee, but the D.G.P. vide his order dated 30.6.2007 instead of nominating them as members of the Mishra Committee, directed them to assist the Committee in the enquiry. Similarly, by various orders, others were also directed to assist the Mishra Committee. None of the orders show that they were appointed as members of the Mishra Committee nor there is anything on record to show that the order of the Director General dated 13.6.2007 was ever modified or superseded.

42. Another request of Sri Mishra vide letter dated 16.7.2007 for constitution of another committee to scrutinize the second recruitment of Civil Police at Sitapur in view of involvement of Sri Mohd. Javed Akhtar during recruitment, was turned down by the Director General of Police vide order dated 21.7.2007. This letter of the D.G.P. would further make it clear that others who had been nominated to assist the committee, had not been made members of the Mishra Committee. In the affidavit of Sri Shailja Kant Mishra, the letter of the D.G.P. dated 21.7.2007 is annexed as Annexure-8. On the aforesaid subject the reply was (as loosely translated in English): the enquiry in the case of second recruitment at Sitapur (24.4.2006) of Civil Police shall be conducted under your Chairmanship and the other two members of the committee. Sri Mohd. Javed Akhtar, D.I.G., Meerut Zone would not act as a member in this enquiry

Had the D.G.P. nominated the others like Sul Khan Singh vide his letter dated 19.6.2007 and others vide letter dated 30.6.2007 as members of the Mishra Committee, there was no occasion for him to have used the words 'other two members of the committee'.

43. In fact, when the Director General of Police thought it appropriate and necessary, it did appoint another committee. It had appointed another committee vide its order dated 29.6.2007 to enquire into different aspects of the selectees posted at different places. It gave reasons for formulating another committee in the following words (as loosely translated in English):

It is essential to carry out an extensive review with respect to so called irregularities which are coming to light in course of scrutiny of the said recruitments by the Enquiry Committee. Such a large work cannot be undertaken by any limited Enquiry Committee. In the interest of justice, it is necessary that scrutiny in the matter of all the aforesaid recruitments be carried out by the concerned Superintendent of Police, Commander and Radio Headquarters. Selections/ recruitments made during the year 2004-2006 on the post of constable in P.A.C. and Civil Police and also on the posts such as (1) Assistant Operator, (2) Workshop Employee, (3) Radio and Maintenance Officer, and (4) Radio Centre Officer in the Wireless Department are to be scrutinized by the Committee to be constituted by the Commander, Senior Superintendent of Police/ Superintendent of Police of their respective appointment units and Additional Director General of Police, Wireless Headquarters.

44. These committees were also directed to submit their report to the Mishra Committee.

45. It is thus apparent that none of the officials namely S./Sri Sul Khan Singh, Aditya Mishra, Rajiv Sabharwal, Avinash Chandra, Rajiv Krishna, Ram Singh, Vijay Kumar, Brij Bhusan, R.P. Singh and Ramit Sharma were

members of the Mishra Committee.

46. Nevertheless, Sri Mishra vide his order dated 14.7.2007 fragmented the Mishra Committee into different sub-committees headed by one of its member who were all D.I.Gs. rank officers. The enquiry was entrusted to the Mishra Committee headed by an officer of the rank of Additional Director-General and faith was also reposed on it, but the fragmentation of that committee left a D.I.G. rank officer to conduct the main enquiry. There is no shred of evidence or disclosed authority by which Mr. Mishra was authorized to constitute the subcommittees. The principle 'delegatus non-potest delegare' meaning that a delegatee, who has received his authority from a principal, is incompetent to delegate his power to some other person or body, applies even to administrative enquiries. At least to this enquiry which has visited the petitioners with civil consequences.

47. Where the power is conferred on a collective body, the latter cannot delegate that power to be exercised even by one of its own members, unless, there is something to the contrary in the delegation. It can seek help of others when the task is onerous, but it cannot abdicate the main power or function. Had the Government treated this as only a fact finding enquiry even for these petitioners, as it has done for the officers, situation would have been totally different. But these reports are the foundation and the only basis of the action taken against them, the Committee could not have gone beyond the terms of its appointment. Had these reports been considered by Mishra Committee and then if it had forwarded its own independent report under its signature, it could have been difficult to challenge the action based on it.

48. Having examined the pith and substance of the order constituting the Mishra Committee and the related documents, it can safely be said that it had abdicated its power, and neither the report nor its recommendation can be attributed to the Mishra Committee.

49. It is then urged on behalf of the petitioners that on the strength of these reports, their services have been dispensed with in a post haste manner but the officers against whom the enquiry was initiated, instead of being punished, even their suspension orders have been withdrawn. In fact, it is contended, the State has put the cart before the horse and there is a tacit understanding between the officers and the Government and accordingly they are searching for an escape route, and once these petitions are dismissed, all would be exonerated.

50. It is apparent from the record and is also admitted to the parties at the bar that the enquiry was ordered on the basic allegation that illegalities and irregularities were committed for extraneous considerations and on the basis of the reports submitted, departmental action was initiated against the Chairmen and the members of the various Recruitment Boards and they were also placed under suspension. It is also admitted by the parties that suspension orders have since been revoked. The Court, in order to give an opportunity to the State, directed the Principal Secretary to file an affidavit vide order dated 14.12.2007, to bring on record:

- (a) The stage of the proceedings against the aforesaid officers, supported by documents ;
- (b) The reasons for revoking the suspension orders, supported by documents ; and
- (c) The reasons for the delay in concluding the proceedings and the time frame required for completing it.

51. In pursuance thereof, the Principal Secretary (Home) filed an affidavit on 19.12.2007 in the Court and the relevant paragraph Nos. 4, 5, 6, 7 and 8 of the said affidavit are quoted below:

4. That the decision to suspend 28 officers (25 I.P.S. Officers and 3 State Radio/ Assistant Radio Officer) was taken at the Government level on different dates, but suspension order was issued by the State Government only in the case of 26 Officers as 2 I.P.S. Officers namely S/Sri Daljeet Singh Choudhary and Mukul Goel were on deputation to Government of India. In their matter, a request letter to place them under suspension was sent to the Government of India. A copy of these orders and letters is being enclosed as Annexures-A1 to A28.

5. That the punishment and suspension matter of I.P.S. Officers are dealt in accordance with the provisions of

All India Services (Discipline and Appeal) Rules, 1969, whereas the same matters relating to the State Radio/Assistant Radio Officers are dealt in accordance with the provisions of the U.P. Government Servants (Discipline and Appeal) Rules, 1999.

6. That all the officers mentioned above made their representation to the State Government to exonerate them. A copy of the representation made by them is being enclosed as Annexures-A29 to A56.

7. That a perusal of their representation would reveal that all these officers have admitted their guilt to some extent.

8. That having kept in mind their aforesaid admission and keeping into consideration that they would not be able to influence the disciplinary proceedings if reinstated pending enquiry and also looking into the scarcity of I.P.S. Officers and in public interest, the suspension of officers excluding those who were posted on deputation to Government of India was revoked. A copy of the order passed in this behalf is enclosed as Annexures-A-57 to A-84. In the matter of S/Sri Daljeet Singh Choudhary and Mukul Goel, Government of India was requested to revoke their suspension in case they had put them under suspension at their end. It is most humbly submitted that these orders were passed after obtaining the approval of Chief Minister who is also Hon'ble Minister in charge of the Home Department.

52. It is apparent that the only ground for revoking the suspension appears to be partial admission of their guilt, because neither the strength of I.P.S. Officers is shown to have decreased nor there is any allegation of change in circumstances with respect to influencing the disciplinary proceeding between their suspension and its revocation. Why different standards?

53. Coincidentally, all the alleged letters written to the Chief Minister by these officers, partially admitting their guilt, are identically worded so much so that even the word 'Manviya' (Human) used twice in those letters has been scored off in all of them. More coincidence, all these alleged admission letters are dated 23.11.2007. Yet more coincidence, their suspensions were revoked the very next day on 24.11.2007 by identically worded orders. It is often said that too many coincidence, raises a doubt.

54. The affidavit further discloses that charge-sheets had already been served on the officers but it refrained from giving any time frame for completing the proceedings against the officials. This Court again vide order dated 10.1.2008, noted arguments of the petitioner and the Government was asked to conclude the domestic enquiry ordered against the officials of the various Recruitment Boards. Yet, no action was forthcoming and thus, again by the order dated 5.2.2008 the State was asked to give reason for not completing the enquiry in the following words:

On the last occasion, though no written orders were passed, orally the State was asked to bring on record the status of the enquiry against the officers, but the request appears to have been ignored. By the first order dated 14.12.2007, the State was directed to disclose a time frame required for completing the enquiry against the officers, yet the said request has also been glossed over. Accordingly, the present status of the enquiry together with reasons why it has not been completed even after passage of such a long time when allegedly all materials in support of the charge-sheet has already supplied to the concerned officers.

55. In pursuance thereof, an affidavit of the Principal Secretary (Home) was filed on 26.2.2008 disclosing impossibility of fixing a time frame in the following words in paragraph No. 7:

7. That this Hon'ble Court has directed to produce the present status of the enquiry against the officers and also indicate the reasons why it has not been completed even after a passage of such a long time when allegedly all materials in support of the charge-sheet has already been supplied to the concerned officers. It is submitted in this regard that a chart showing the present status of the enquiry against I.P.S. and P.P.S. officers are annexed herewith as Annexures-SC 28 and 29 respectively to this affidavit which will reveal the status in this regard. It may be seen that charge-sheets in respect of 74 Provincial Police Services Officers out

of 77 have been served. It is most humbly submitted that these departmental enquiries are being conducted as per the provisions contained in the All India Services (Discipline and Appeal) Rules, 1969 in respect of I.P.S. Officers and in accordance with Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 in respect of P.P.S. Officers. As such the time taken for completion of these departmental enquiries will be governed and dictated by the provisions of those rules. It is, therefore, not possible for the State to give a specific time frame in the matter. The Government is making all efforts to get the enquiries completed expeditiously certainly within the frame work of relevant Service Rules.

56. Under the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 1969 Rules), the power of suspension is provided under Rule 3 wherein the Government is empowered to place the I.P.S. Officers under suspension in contemplation of enquiry. However, such order would not survive beyond the period of forty five days except upon confirmation of the suspension by the Central Government or the commencement of the disciplinary proceedings.

57. However, the affidavit is silent whether the Central Government had confirmed the suspension order as till then neither the charge-sheet was served nor inquiring authority was appointed.

58. Sub-rule (2) of Rule 8 of the 1969 Rules provides that whenever disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct against a member of the Service, it may appoint an authority to enquire into the truth thereof. Sub-rule (5) stipulates that the disciplinary authority shall cause to be delivered on the delinquent the article of charges and statement of the imputations of misconduct together with supportive documents and list of witnesses requiring the delinquent to submit his written statement within a specified time. After the appointment of a inquiring authority, the disciplinary authority is required to appoint a presenting officer to plead on behalf of it under sub-rule 6 (c). By virtue of Sub-rule (8) the delinquent is bound to appear before the inquiring authority at any time prescribed after expiry of ten days from the date of receipt of article of charges or within such further time not exceeding ten days. Under Sub-rule (10) where the delinquent has not admitted any of the article of charges in his written statement or has not submitted any written statement of defence but appears before the inquiring authority, it may ask him to plead guilty or require him to place his defence. The inquiring authority may direct the presenting officer to produce any evidence in support of his article of charges and adjourn for that purpose to a date not exceeding thirty days in case the delinquent fails to appear when the delinquent is given another opportunity of placing his defence. On this adjourned date the presenting officer has to prove the article of charges by oral or documentary evidence and the delinquent is entitled to cross-examine the witnesses. On closure of the case of the disciplinary authority, another chance is provided to the charged officer to record his defence. However, in case the delinquent does not submit his written statement of defence on the specified date or otherwise does not appear in person before the inquiring authority and fails to place his plea, then under the provisions of Rule 8, the inquiring authority is authorized to proceed ex parte.

59. In the case of Provincial Officers, the delinquent against whom a departmental enquiry is contemplated and where the allegations are serious which may ordinarily warrant major penalty, can be placed under suspension under Rule 4 of the U. P. Government Servant (Discipline and Appeal) Rules, 1999. Procedure for imposing major penalties is provided under Rule 7 where the disciplinary authority itself, or appoint a subordinate authority as Enquiry Officer, to enquire into the charges and charge-sheet is to be served after the approval by disciplinary authority. Sub-rule (iv) of Rule 7 places obligation on the delinquent to submit his written statement on specified date which shall not be less than 15 days from the date of issue of charge-sheet. Under Sub-rule (x) if the delinquent does not appear on the date fixed in the enquiry, the Enquiry Officer is entitled to proceed ex parte.

60. The aforesaid affidavit dated 19.12.2007 of the Principal Secretary, shows that copies of the article of imputations against the I.P.S. Officers in pursuance of 1969 Rules were issued between 5th and 8th December, 2007 by the disciplinary authority. In each of these, they were given 15 days time to submit their

written statement, failing which an ex parte enquiry was contemplated.

61. The affidavit dated 26.2.2008 of the Principal Secretary discloses the status with regard to the disciplinary enquiry against I.P.S./ P.P.S. Officers. It shows that the inquiring authority and presenting authority were appointed in all the 25 cases of the I.P.S. Officers on 14.1.2008 but the affidavit is conveniently totally silent whether any date was fixed or any written statement of defence has been filed by the delinquent and if not why the inquiring authority has not proceeded ex parte in pursuance of the 1969 Rules. If the written statement has been filed, what date was fixed by the inquiring authority to hold the enquiry, has also not been disclosed.

62. So far as the officials covered by the 1999 Rules are concerned, the chart is absolutely silent as to whether even Enquiry Officer has been appointed and if so whether any date for the enquiry has been fixed even though the time provided in the show cause notices expired long back.

63. No reason or explanation is forthcoming from the State why the departmental proceedings are not proceeding in accordance to the provisions noted above, even though the time fixed under the rules has long expired.

64. The speed shown in the case of the petitioners, in ordering the enquiry, completing it and terminating their services in about 3 months time, but for no plausible reason that speed is completely lacking in the case of the officers. More than five months have expired, yet the enquiry stands at the same place as it stood on the date of appointing the Enquiry Officer.

65. The fairness of a procedure can normally be evaluated against six criteria. Consistency is one of the important ones and refers to similarity of treatment and outcome. It requires equal treatment for all affected parties in equal circumstances.

66. It appears that the apprehension of the petitioners is correct and the State has purposely not proceeded with the departmental enquiry against the officials and the State is avoiding to disclose the reasons.

Has the reason to be found in the realm of conjectures?

67. The State has filed an application dated 8.5.2008 supported by an affidavit sworn by Sri D.K. Gupta, Special Secretary (Home), stating that in several criminal cases against the officials, the prosecuting agency has sought sanction for criminal prosecution of the Chairman and members of different Recruitment Boards under various sections of the Indian Penal Code read with Prevention of Corruption Act as sufficient evidence against them was found by the Anti-Corruption Organization of the State. Why then, these officials have not been placed under suspension again in view of Sub-clause (3) of Rule 3 of 1969 Rules?

68. Is the State presenting a fait accompli?

69. Any average lawyer worth his salt can stall the domestic enquiries on the plea that criminal charge for the same transaction is pending. The State, which has a battery of lawyers, a full fledged law department can safely be presumed to know the aforesaid legal position. Further, it is common legal knowledge that the standards of proof required in a criminal trial are comparatively much higher where the criminal act has to be proved beyond doubt. But, in a domestic enquiry only preponderance of evidence is sufficient. Yet, the effort of the State seems to be to pursue the criminal case at the cost of the domestic enquiry.

Is this the tacit understanding and the escape route?

It may be in the realm of conjectures, but the State has forced the Court to it. It is beyond comprehension that the Government may have no stomach to take on such erring officers, but the Court has been left seeking answers. This is, despite the stand taken by its Principal Secretary (Home) in the affidavit dated 19.12.2007 that the officers have admitted their guilt.

70. There is another aspect to this issue. It is suspected that large number of the candidates had paid illegal gratification to the officers to secure their selection.

Who is the greater sinner?

71. The hapless unemployed youth who is open to allurements or, the well established, secured with regular salary and highly educated officers, who are in a dominant position?

72. Law of nature and gravity, both have at least one principle in common. All things travel from above to the ground below. All reforms and cure for, malady has also to percolate from above.

73. The stand of the State before the Lucknow Bench [in Writ Petition No. 7680 (M/B) of 2007, B. M. Tripathi and others], which is part of the unrebutted pleading here, is that the truth of the allegation of 'Corruption, negligence and irregularities' in the selection has yet to be revealed. If that is so, it still remains in the realm of suspicion.

74. Suspicion, however, strong, cannot replace proof. Suspicion is a slippery floor, one must not tread it unless wiped clean by hard facts in the nature of proof. In such an enormous exercise, with time constraints, there are bound to be errors, basic and peripheral, human or otherwise. Till motive is correlated to errors, other than peripheral or human, it would not be safe to base any action which leads to civil consequences. Except for suspicion, there is no shred of evidence connecting any of the selectees to the errors. In fact, there could not be, because the enquiry was focussed only on the conduct of the members of the Board. Till date that suspicion has not been proved, to put it bluntly, the State is avoiding to proceed in this direction. Here are constables, who are at the lowest rung in the hierarchy of the department having no say in its policy planning but only to carry out orders of their superiors, but those against whose conduct suspicion has been raised are still very much part of the policy planning after a brief stint in suspension.

75. Common sense justice' or 'Fair play in action', in the present context, requires that enquiry first should have been undertaken against the officers and only if the allegations stood proved in law, the lowly constables should have been displaced. What if tomorrow it is found that the irregularities and discrepancies were not deliberate but bona fide human errors

76. It is then urged on behalf of the petitioners that the impugned orders cancelling the selection of the respective Recruitment Boards have been passed without application of mind either at the level of the State Government or at the level of the D.G.P. This, it is also urged, is evident from the fact that even the effect of the judgment of the Lucknow Bench of this Court, was not examined. Thus, it is contended, the action is arbitrary.

77. It is admitted that it was not a regular disciplinary enquiry or even a fact finding enquiry for the selectees, but it was an administrative enquiry against the officials of the Recruitment Boards initiated on the strength of the three letters, which have been mentioned above. The report has refused to deal with the main ground which was the soul of the complaint, namely, selection on the basis of illegal gratification. Such an administrative enquiry, may not be covered under any statutory rule but even in such enquiries, the principle of natural justice would be applicable. If the State intended to use the report of the enquiry to base any action on it which may lead to civil consequence, it would have to demonstrate that it applied its mind before acting upon such reports. There is nothing in the impugned order even to suggest that the record which forms the basis of the report, was examined by it. Further, perusal of the impugned order shows that apart from repeating the tentative findings of the report, there does not appear to be any application of mind. Each report is a voluminous document running into about 100 pages, but one single individual has passed the cancellation orders, in large number of cases within a day.

78. A perusal of the covering letters etc. forwarding the report to the Government brought on record by the Principal Secretary shows that the reports of the second recruitment at Moradabad, corresponding to enquiry

No. 21; the first recruitment of Sitapur, corresponding report No. 26 ; the second recruitment at Gorakhpur corresponding to enquiry report No. 29 and second recruitment at Fatehpur, corresponding to enquiry No. 3, could have been received by the Government on or after 17.9.2007 and the impugned order therein was passed on 18.9.2007. Similarly, in the case of first recruitment at Moradabad, corresponding to enquiry No. 46 ; the recruitment in the Wireless Department, corresponding to enquiry Nos. 48 and 51 ; recruitment of P.A.C. at Gorakhpur, corresponding to enquiry No. 49 ; recruitment of P.A.C. at Bareilly, corresponding to enquiry No. 50 were all received on or after 29.9.2007 and the orders thereon were passed on 30.9.2007.

79. Assuming that the covering forwarding letter of the D.G.P. or his subordinates alongwith the report was received in the Government on the same date on which it was sent, the following chart would show that within two days of the receipt of the report, the State Government took decision to cancel the respective recruitments:

ReportNo.

RecruitmentBoard

Dateof receipt by Government

Dateof order by Government

21

Moradabad II

17.9.2007

18.9.2007

26

Sitapur I

17.9.2007

18.9.2007

29

Gorakhpur II

17.9.2007

18.9.2007

31

Fatehpur II

17.9.2007

18.9.2007

42

Jhansi III

28.9.2667

30.9.2007

44

Lucknow (Wireless)

28.9.2007

30.9.2007

45

Ghaziabad P.A.C.

28.9.2007

30.9.2007

46

Moradabad I

29.9.2007

30.9.2007

47

Badaun II

28.9.2007 .

30.9.2007

48

Lucknow (Wireless)

29.9.2007

30.9.2007

49

Gorakhpur P.A.C.

27.9.2007

30.9.2007

50

Bareilly P.A.C.

29.9.2007

30.9.2007

51

29.9.2007

30.9.2007

80. In the opinion of the Court, it was humanly impossible to examine the reports, the documents on which it was based and then to take action after objectively, or even subjectively, considering it.

81. Now let us examine how the reports were dealt with at the D.P.G. level.

82. The Mishra Committee was appointed by the D.G.P. vide his order dated 13.6.2007 and it was required to submit the report to him. But, finding that there was nothing to show whether the D.G.P. applied his mind to the report, and whether he concurred with the findings or its recommendations, the Court directed for production of orders/letters/ decisions of the D.G.P. in the following words vide order dated 5.2.2008: Any letter, order or decision of the Director General of Police either dealing with the various reports submitted to it or forwarding it to the Government be also produced in original and annexing copies with the affidavit as aforesaid....

83. In pursuance thereof, in the affidavit sworn by the Principal Secretary (Home) filed on 26.2.2008, the said letter, order or decision has been annexed. Its perusal shows that in none of the cases, except in the case of recruitment to the Wireless Wing of the Police covered by enquiry report No. 44, any approval or decision has been recorded or taken. Even in the case of enquiry No. 44, only one line order regarding acceptance of the report was passed. In all other cases, the reports have merely been forwarded to the Government without any application of mind. In fact, the majority of the reports were forwarded to the Government within a day of its receipt. The report with regard to 3rd recruitment of Civil Police at Varanasi and 3rd recruitment of Civil Police at Bareilly, corresponding to enquiry report Nos. 4 and 5 respectively, was finalized and signed by the members of the committee on 23.8.2007 and on the very next day, i.e., 24.8.2007 it was sent to the State Government by the D.G.P. or on his behalf. Similarly, in the case of recruitment to P.A.C. at Kanpur Dehat covered by enquiry report No. 6 ; 3rd recruitment of Civil Police at Kannauj, covered by enquiry No. 7 ; recruitment of P.A.C. at Etawah covered by enquiry No. 8 ; 1st recruitment of Civil Police at Jhansi, covered by enquiry No. 9 and 2nd recruitment at Jhansi of Civil Police, covered by enquiry No. 10 were all signed by the members of the committee on 31.8.2007 and on the very next day, i.e., 1.9.2007 it was sent to the State Government. Again, the enquiry report of 3rd recruitment of Civil Police at Mainpuri, covered by report No. 11 ; recruitment of Civil Police at Mainpuri, covered by report No. 12 and second recruitment of Civil Police at Ghazipur covered by report No. 13 were finalized and signed on 2.9.2007 and on the very next day, i.e., 3.9.2007 it was sent to the State Government.

84. Similar is the case with 16 other enquiry reports whose details are given in the chart below:

Report No.

Recruitment Board

Date of Report

Date of sending to Government

22

Gonda I

12.9.2007

13.9.2007

23

Deoria I

13.9.2007

13.9.2007

24

Sonbhadra

13.9.2007

14.9.2007

33

Balla P.A.C.

21.9.2007

22.9.2007

33

Bulandshahr II

21.9.2007

21.9.2007

40

Gonda II

24.9.2007

25.9.2007

41

Ghazlabad 11I

23.9.2007

24.9.2007

43

Moradabad P.A.C.

26.9.2007

26.9.2007

44

Lucknow (Wireless)

27.9.2007

28.9.2007

45

Ghaziabad P.A.C.

27.9.2007

28.9.2007

46

Moradabad I

28.9.2007

29.9.2007

47

Badaun 11

27.9.2007

28.5.2007

48

Lucknow (Wireless)

28.9.2007

29.9.2007

49

Gorakhpur P.A.C.

26.9.2007

29.9.2007

56

Bareilly P.A.C.

25.9.2007

29.9.2007

51

Lucknow (Wireless)

29.9.2007

29.9.2007

85. The aforesaid facts reveal much more than what it hides. The D.G.P. had directed the enquiry and before forwarding the reports to the State Government, it should have applied its mind to the reports and the documents on which it was based. In fact, as the aforesaid data reveals that there was no time for the D.G.P. even of reading it, much less to apply his mind.

86. Neither the contents of the reports nor its recommendation has been tested either at the level of the D.G.P. or at the level of the State Government. It is as if both are on automation and going through the formalities of a predetermined result. Otherwise, why the haste

87. It is admitted to the parties that the Lucknow Bench of this Court while dealing with the challenge to recruitments at Sitapur and Gonda had rendered a decision in *Harendra Singh v. State of U. P.* 2005 (6) AWC 6161, whereby it returned findings after examining the records thereof, that there was no case of illegality, favouritism, nepotism etc. and had rejected the petition. It is also admitted that neither the Mishra Committee or the D.G.P., nor the Government had considered the effect of the said judgment. However, Mr. Upadhyay has vehemently urged that in such a case, principles of *res Judicata*, estoppel or fairness in action, cannot tie down the Government from enquiring into the recruitment afresh and then take a decision thereon. He has relied upon the ratio of the Apex Court in the case of *Col. (Retd.) B. J. Akkara v. Government of India and Ors.* 2006 (8) SCJ 333.

88. In Akkara's case (*supra*), the question which engaged attention of the Apex Court was whether the Government was bound by a High Court order quashing the alleged discriminatory circular relating to addition of N.P.A. to minimum pay scale for the purposes of pension in case of Civilian Medical Officer vis-a-vis the Armed Forces Medical Officer on the ground that the judgment of the High Court in Civilian Medical Officers cases had not been challenged but had been implemented. It was held that the Government could resist subsequent similar challenges before the Courts as it was a case of financial burden on it. In the opinion of the Court, this ratio is not at all applicable to the present facts.

89. It is apparent from the record that neither the D.G.P., while ordering the enquiry nor the officials during the enquiry and preparation of the reports, the aforesaid judgment was even considered. Same is the position when the reports were submitted to the D.G.P. and the Government. No doubt the right of the Government to investigate alleged fraud, despite the judgment, cannot be questioned, but, at least the effect of the judgment had to be considered. At every stage the officials were blissful of the judgment, or perhaps, even its existence. This attitude further fortifies non-application of mind at all levels of the decision making process.

90. It is urged on behalf of the petitioners that the irregularities or discrepancies found in the various recruitments were only handful and sufficient to identify the candidates but, yet, neither any effort was made to separate good from the tainted nor irregularities or discrepancies were so large or interwoven which required cancellation of the entire recruitment. It is also urged that on identical irregularities and discrepancies, some recruitments have been saved but that standard was not followed in the case of cancelled recruitments.

91. Both these arguments are inter-related and thus, it would be appropriate to deal with them jointly.

92. Large number of cases on this issue have been cited by both the sides at the bar. However, the anchor sheet of the petitioners argument is based upon the decision of the Apex Court in the case of *Inderpreet Singh Kahlon and Ors. v. State of Punjab and Ors.* : AIR2006SC2571 . while the respondents have relied on the ratio laid down in the case of *Union of India v. O. Chakradhar* : [2002]1SCR1091 .

93. The Apex Court in the case of *Union of India v. O. Chakradhar* : [2002]1SCR1091 was considering a case where recruitment to the post of junior clerk-cum-typist was held without any typing test. A C.B.I., report found that there was nothing on record to show that the typing test was conducted, no separate marks were allotted for typing and no candidate was qualified or disqualified on the basis of the typing test which was mandatory under the rules. The report also found some substance in the allegations of favouritism,

corruption etc. In these circumstances, the Apex Court relying upon the case of *Krishan Yadav v. State of Haryana* : (1995) ILLJ 775C, finding that illegality and irregularity were so intermixed with the whole process of the selection that it was impossible to sort out the untainted from the tainted ones and therefore it held that the entire selection was rightly cancelled and there was no necessity for any notice or opportunity.

94. In the case of *Inderpreet Singh Kahlon and Ors. v. State of Punjab and Ors.* : AIR 2006 SC 2571, the facts were that one Rayindrapal Singh Sidhu was the Chairman of the Punjab Public Service Commission when allegations were levelled against him that he had manoeuvred the recruitment and on extraneous considerations, including monetary consideration, got several persons appointed on different posts. Raids were conducted and about Rs. sixteen crores were recovered from him or his relatives. On the report of the Vigilance Bureau, the services of about 173 persons appointed on different posts were terminated and which termination was upheld by a Full Bench of the High Court. The Apex Court after considering all the previous cases relating to mass termination or cancellation of exams, distinguished the cases of cancellation of exams and also distinguished the ratio of *O. Chakradhar* (supra) and went on to hold in paragraph Nos. 43, 44 and 51 to the following effect:

43. Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned Counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.

44. It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Question papers, answer sheets and other documents are available. Reports made by the Bureau were prepared upon examination of the materials collected by it. The High Court itself has noticed that what is not available is the records relating to the procedure adopted in regard to the appointment of paper-setters. It may be true that such records could be destroyed only after a period of five years but it has not been pointed out by the State as to how by reason of the non-availability thereof, it became difficult for the authorities to arrive at the correct facts. We have not been informed that connecting materials were also destroyed. It has been noticed by the High Court that all relevant information was available and submitted to the Court. It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud. It has also not been found that all appointments were made on extraneous considerations including monetary consideration.

51. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.

95. The principle carved out from the aforesaid and other decisions in regard to cancellation of recruitment can be divided into two parts. The first part would comprise of those recruitments which have been made without following the due procedure prescribed under the Rules. Such as, recruitments which have been made without the mandatory advertisement or by overlooking the mandatory eligibility requirement, like knowledge of typing, computer, etc. In other words, the illegality, to enable cancellation of the entire recruitment, should be one which goes to the root of the recruitment itself and runs through the spine of each selectee and is not peculiar or unique to one or a group of selectees. The other part consists of those recruitments where different irregularities are peculiar or unique to one or a group of selectees but, if it is so widespread and interwoven that it is impossible to segregate the tainted from the untainted despite a conscious and bona fide effort.

96. In the present case, the mandatory requirements of recruitment Rules or guidelines have been followed. There was an open invitation through advertisements; the candidates appeared for the three stage tests viz. the physicals, written test and the interview. Therefore, the case does not fall in the first category.

97. The errors or irregularities alleged by the State with regard to overwriting; award of more than prescribed

marks etc., are peculiar and unique to certain selectees or a group of them. Apparently, on the allegations made, these recruitments fall in the difficult second category. Therefore, the State is under law to satisfy itself objectively that it was not possible to segregate the tainted from the good on valid and plausible reasons and it has to discharge the further burden and demonstrate before the Court that it was impossible to do so. The burden is heavy, but, it has to be discharged,

98. It is urged on behalf of the State, and is so mentioned in the impugned orders and the reports on which it is based, that it was not possible to segregate them and further it was not possible to identify the candidates who could otherwise be selected but were displaced by the irregularly selected candidates. The main thrust is on the enormity of the exercise and thus, should be considered first.

99. The enormity of an exercise which directly affects the lives of more than eighteen thousand selectees and their families should not be a ground to by pass it. The crux is, that, apart from enormity of the exercise, there should be impossibility to undertake the exercise in a given fact situation. But, it is not the case of the State that the relevant records were not available. In fact as is evident from the reports, the records were scrutinized before preparing it and they have been kept intact. So, impossible it was not, though there is a dispute whether the entire records were examined or only random scrutiny was undertaken. This aspect would be considered later, but before it, let us first consider the alleged impossibility of the exercise claimed by the State.

100. The reports have identified the selectees in whose cases, allegedly, marks were increased by unauthenticated overwriting in the physical tests. Similarly, anomalies in award of marks to different selectees, for whatever reason, have also been identified in the written test. Thus, identification was not impossible. However, it is urged that award of those very marks which enabled the candidates to be selected either in the physicals, written or interview demonstrates that the board members were awarding marks in a predetermined manner so that a particular candidate obtains more than or the cut off marks to be selected. Nowhere in the report or the impugned orders there is any allegation against the selectees with regard to their involvement or knowledge of the said predetermined action of the recruiting officials. There is also no credible material to indicate that the cut off marks were fixed before or during the recruitment process, to the contrary the candidates were selected in order of their marks obtained in the three stage tests and there could not have been any occasion even to imagine as to what would be the cut off marks of the last selected candidate without the entire exercise being completed. Therefore, the argument has no force. The further argument with regard to award of marks during interview would be considered later.

101. Let us now examine whether or not the entire records were examined or only random scrutiny was undertaken.

102. In the different reports, at some places there is recital of scrutiny of the entire records relating to that particular Recruitment Board whilst at other places it is only random checking. In view of the contradictory recitals, the Chairman and the members of the Mishra Committee have filed their respective affidavits. To avoid repetition, as the stand taken by the members of the Mishra Committee is identical to that of its Chairman, the relevant portion of the Chairman's affidavit is quoted below:

9. That all the mark sheets and answer books of all the candidates were not scrutinized as that would have caused inordinate delay in completing the assigned work of enquiry. However, the anomalies found in these documents were overwhelming enough to reach to the logical conclusions regarding the recruitment done at the particular recruitment centre.

10. That in regard to the observation of Hon'ble Court as mentioned in para 'B', 'C' and 'D' the following facts regarding scrutiny process of the records related with the recruitment exercise, are being mentioned for kind perusal-

(A) Physical Efficiency Examination.-The mark list of about 3/4th or more candidates (both selected and non-

selected categories) were scrutinized.

(B) Written Examinations-

(a) About 3/4th or more answer books of selected candidates only were scrutinized.

(b) That the answer books were not re-examined, but were scrutinized with a view to ascertain anomalies and irregularities, if any, in respect of cutting/over-writing in the marks . awarded, reduction or increase in the awarded marks, difference in handwritings in answer books, difference in handwriting on code slip and answer books, same hand-writing in more than one answer books, evaluation of objective and mathematical questions, difference in totalling of marks, presence of certain identification marks inside the answer books, etc.

(C) Interview.-Mark sheets of all the candidates, who appeared in interview, were scrutinized. Anomalies and irregularities in conducting the interview process and awarding of marks, which were noticed prima facie, were taken cognizance of.

(D) Tabulation. - Process adopted by the Board was scrutinized in the light of directions issued by Police Headquarters, Allahabad and anomalies and irregularities noticed therein were taken into account. Wherever broad-sheets were prepared, about 25% of the entries were randomly cross checked from original mark sheets and anomalies in tabulation of marks were taken into account.

and he goes on to say in paragraph 11 that:

11. The magnitude of the work was so large that it was not possible to scrutinize 100% records and documents connected with the recruitment process during the fact-finding enquiry.

Quantum of irregularities found in random checking and scrutiny were sufficient enough to draw the conclusions regarding the recruitment process adopted at respective recruitment centres.

103. This is totally contrary to the direction given by the Chairman of the Mishra Committee in his order dated 14.7.2007 to its members and also their associates. It directs, (as loosely translated in English (A) and (B))-

(A) He shall ensure that all the records papers, etc. relating to recruitment at the allotted recruitment centres are summoned in his Zonal Office and charge thereof is duly taken at a specified safe place.

(B) He shall get scrutinized all necessary recruitment related records/papers including those of physical efficiency test, written test and interview as also tabulation and other ones and shall take cognizance of all the irregularities coming to light as a result of that.

104. It is evident that the direction was for examining all the documents relating to the three stages. There is no document to show that any decision was either taken for scrutinizing only 3/4th of the records of the physicals and written either by the Mishra Committee or anyone else. In fact, the Mishra Committee has admittedly not recorded any minutes of its meeting which could show that any procedure or criteria was adopted for random examination of the records.

There appears to be a subtle effort to hide facts from the Court.

105. Without further reflecting upon it, assuming that the affidavit is correct and only 3/4th of the records were scrutinized, but no plausible reason is forthcoming why the remaining record could not be examined. The contention that it could not be done due to paucity of time, is erroneous as no such time limit was fixed in the order constituting the Mishra Committee and directing it to examine the irregularities in the recruitments. However, assuming that a time limit was fixed for submitting the reports, as mentioned in the subsequent order dated 31.7.2007 passed by the Director-General of Police, but it is only an executive direction and the time limit could have been extended. But, whether any effort was made in that direction, has not been

demonstrated in Court. Had there been any legal impediment in seeking the extension in time of submitting the reports, it may have been cited as a plausible reason, but there is none in the present case. It is, thus, apparent, that the entire exercise was undertaken in haste and except for claiming impossibility to separate the good from the bad, no effort was made despite all records being available.

106. However, considerable stress has been laid, as mentioned above as regard to impossibility of the task to find out and identify the candidates who could not be selected due to the irregularities. Assuming it to be so, but that is an entirely different issue. Here the effort should have been made to separate those candidates in whose case the selections were found to be good. The State has woefully failed to satisfy the Court that it was impossible to separate the good from the bad.

107. On the second aspect, Sri Upadhaya appearing for the State at the very outset contended that there can be no negative equality and if the Court finds that there is unfair treatment, the State is prepared to cancel the recruitments of even those Boards which have been saved by the Committee.

108. It is not a case of negative equality or a cut and paste solution, but the standards which the Committee professed by which it saved certain recruitments, can be taken to be the barometer to test the other reports.

109. In the reports recommending cancellation of the recruitments great stress has been laid on unauthenticated cutting or overwriting including reduction or increase in the marks ; evaluation of arithmetic and objective questions ; difference in handwriting in the answer books and code slip ; identification marks in the answer books and difference in totalling, apart from the trend of award of marks in interview.

110. In the first recruitment of Civil Police at Deoria, corresponding to Enq. No. 23, it is apparent that unauthenticated cutting and overwriting as found in paragraph 3.1.1 has been described as 'human' error. In the same report difference in handwriting has been found in paragraph 3.2.4 but neither report of handwriting expert was sought nor any action was recommended. Similarly, different irregularities in paragraph Nos. 3.2.5 and 3.2.8 were detected, but no action taken even though there is a finding that marks awarded have been increased. Further, in paragraph 3.2.3 irregularities in award of marks for the arithmetic answer in the case of 193 selected candidates were found, which led to their selection but it was saved at paragraph 7.5 on identical explanations which were given by the officials of the Board where the recruitments were cancelled. In this selection of 425 candidates, results of 227 candidates were affected due to the aforesaid anomalies but, yet, no recommendation for cancellation of this recruitment was made.

111. As observed above, the trend of awarding higher marks to those who had secured low marks in the physical test and vice-versa during interview has been adversely commented upon in the recruitments cancelled. However, in regard to second recruitment of Civil Police at Sitapur, the same trend has been noticed in the corresponding Enq. No. 34 at paragraph 1.6.3 but it draws no adverse comment.

Is it because this recruitment was carried on under the Chairmanship of Sri Mohd. Javed Akhtar, a member of the Mishra Committee

112. The Court does not wish to burden the judgement by giving details of every enquiry report relating to the centres which have been saved, as it is same story with marginal difference.

113. Having perused the different reports, it is apparent that one settled norm was not followed to adjudge all the recruitments and different standards were invoked for whatever reason.

114. Let us now examine as to whether the discrepancies in respect to different Recruitment Boards were of such large proportion that there was no option except to cancel them.

115. In the first recruitment of Civil Police at Etawah, corresponding to enquiry No. 18, about 33 discrepancies have been detailed in selecting 450 candidates which is evident from the report and the cancellation order. Assuming all the discrepancies to be correct, it is only 7.3% of the selected candidates. It is also-worthy of

note, that about 4,557 candidates had appeared for the written tests and 2,440 for the interview and if the alleged discrepancies are examined, against these figures, the percentage becomes nearly negligible. Similarly, in the case of second recruitment at Ghaziabad, corresponding to enquiry No. 13 for recruiting 370 candidates, 36 discrepancies were found at 9.7%. In this selection, 9196 candidates participated in the physicals, 7,668 candidates in the written tests and 3,486 took part in the interview. In the third recruitment of Civil Police at Gorakhpur, corresponding to enquiry report No. 1, 65 discrepancies have been detailed in a selection of 600 candidates at a percentage of 10.8%. In this selection 12,111 candidates appeared for the written tests where 8015 candidates qualified but only 7,587 candidates appeared for the interview. Similarly, in the third recruitment of P.A.C. at Kanpur Dehat, corresponding to enquiry No. 6, 40 discrepancies have been detailed in selection of 350 candidates at a percentage of 11%. In this selection, 2,451 candidates appeared in physical tests, 2,291 candidates appeared for the written test and 941 candidates for the interview. Likewise, in the recruitment of constables in P.A.C. at Etawah, corresponding to enquiry No. 8, 75 discrepancies have been detailed in selection of 431 candidates at 17.4%. In this selection 9,234 candidates appeared for physicals, 6,075 candidates for written tests and 3,317 candidates for the interview. In the third recruitment at Moradabad corresponding to enquiry No. 39, 83 discrepancies have been detailed in selecting 600 candidates at a 13.8%, but in 33 cases either the candidates were not selected or the discrepancies were inconsequential, thus, only about 68 candidates were allegedly selected due to the discrepancy which amounts to 11.3%. Here also, 13,902 candidates appeared for physicals, 8,256 candidates for written tests and 5,891 candidates for interview.

116. In the first recruitment of Civil Police at Deoria, (Enq. No. 23) 8,861 candidates appeared for the written tests and 4,461 qualified therein out of which 4,389 candidates appeared for the interview wherein 452 candidates were selected. In this recruitment 10 candidates were selected on the basis of overwriting and cutting without authentication by the members of the Board and 7 were likewise selected by purposeful enhancement of marks. 193 candidates were granted marks in the arithmetic question only on giving the final answer correctly though steps in arriving at it was either wrong or no steps to reach the answer were given and thereby they benefited by 5 to 25 marks. In three cases, discrepancies in handwriting were found. Other discrepancies in respect of 14 others candidates were found who were selected and thus out of 425 selected, result of 227 was due to the aforesaid discrepancies at 53.4%. However, this selection has been saved.

117. The position of some of the other Recruitment Boards would be evident from the following chart. Care has been taken, but there may be minor increase or decrease in the number of discrepancies noted. In large number of cases, different discrepancies have been found for a particular candidate at different stages, but the same has also been included. The first entry in the chart with respect to report No. 23, which has been saved, has been included only for comparison:

ReportNo.

RecruitmentBoard

No. of Selectees

No. of Discrepancies

Percentage

Successfulin Physical

Successfulin Written

23

DeoriaI

452

227

53.4%

8,861

4,461

2

Etawah (III)

679

183

27%

NA

NA

3

Allahabad (I)

425

77

18%

15168

6524

4

Varanasi (III)

666

166

27.6%

16011

3012

5

Bareilly (III)

660

105

17.5%

8734

5387

7

Kannauj (III)

400

96

24%

3453

2541

9

Jhansi (I)

375

133

35.4%

7147

3485

11

Mainpuri (III)

679

290

42.7%

9026

2169

12

Mainpuri

525

181

34.4%

6944

5877

15

Ghazipur (I)

425

186

42.35%

8050

3565

16

Etah (III)

679

261

38.43%

7719

2993

24

Sonbhadra

300

114

38%

4360

1913

35

Buland-shahar (II)

400

83

20.7%

8010

4795

42

Jhansi (III)

666

122

26.33%

MA

3444

43

Moradabad P.A.C.

350

97

27.7%

5716

5387

47

Badaun (II)

370

72

19.4%

4002

3297

51

Lucknow (Wireless)

1086

369

34%

8779

NA

NA = Not available to Court.

118. Thus, it cannot be said that the irregularities or discrepancies were of such large proportion where there was no other option except to cancel the entire recruitment itself. Though it may be repetitive, but untainted selection could have been identified if there was a will to do so.

119. The State has laid tremendous stress in the manner in which interview was conducted by the different Boards where despite the direction of the Headquarters, the candidates were interviewed in groups and trend of award of marks, it is alleged, showed that it was farcical and showed a design.

120. Before dealing with the argument, it would be appropriate to go back a little to appreciate the argument better. As noted in the earlier part of the judgment and it is also so disclosed in the reports, the Mishra Committee had issued advertisement soliciting complaints against the recruitment. In pursuance thereof, it is alleged, several complaints through letters and telephones were received stating that candidates with forged mark sheet, false caste and other certificates and even those who did not possess the requisite physical measurement or age had been selected. In pursuance thereof, the D.G.P. vide his circular dated 29.6.2007 had constituted different committees at the district and command level to re-check the height, high school certificate, date of birth, character verification, caste or other certificate, their training sheets and re-medical examination of all the candidates selected. In pursuance therefore, all the petitioners underwent revaluation at their respective posting or training centre and all of them have been cleared in this revaluation. It would be appropriate to quote the chart prepared by the State and filed in this Court through affidavit of Principal Secretary (Home) dated 26.2.2008:

No.of candidates removed on the ground of false and incorrect certificate.

No.of candidates removed for not possessing requisite physical measurement

No. of candidates found medically unfit.

No.of candidates removed for filing false affidavit

Total

322

40

133

110

605

121. The aforesaid chart would show that out of about 22,000 personnels selected across the Board, only 40 were detected to have inducted with less than the minimum prescribed standards of physical measurement. It comes 0.18 per cent. In the chart annexed as aforesaid, the difference in height which has been noted at some places is between 0.1 to 0.5 centimetres less than the prescribed minimum height. This percentage was negligible.

122. In the aforesaid circular dated 29.6.2007 the D.G.P. had also required the committees to scrutinize the training sheets in the following manner:

Training sheet of a recruited constable.-During the course of the training, training sheets regarding physical efficiency of these recruited constables are drawn up by the Institute at the training centre. They are also subjected to monthly/quarterly/final written tests. Kindly ensure that their training sheets are correctly filled up and answer sheets concerning their written tests are properly evaluated. These training sheets and the copies of the written tests may be summoned by the Enquiry Committee for perusal. If any constable fails in the examination or does not have minimum qualification, such a matter be immediately referred to the Enquiry committee.

123. In pursuance of the aforesaid, even in the training sheets of monthly, quarterly and final test, nothing

adverse to the petitioners was found. The allocation of marks for the recruitment indicates that the main requirement of a constable is his physical proficiency and endurance. As already noted in the earlier part of the judgment, 100 marks were fixed for physical under different heads such as sit up, chinning up, cricket ball throw, distance running etc. and to qualify in the physical test, the candidates had to secure more than 50% marks. Admittedly, the petitioners secured more than 50% in the respective physical test.

124. The second requirement was mental aptitude which was tested in the written test which had a maximum of 50 marks only and bench mark to succeed was fixed at a meagre 33% only. All these petitioners also cleared the second requirement.

125. Interview carried only 20 marks without any qualifying mark, meaning thereby, that even if a candidate secures one mark and if otherwise he had cleared both the tests, he is bound to be selected according to his merit. These 20 marks for interview were further divided under different heads. Five marks were for educational qualification and 15 marks for personality and mental proficiency. Checking of mark sheet was more of ministerial job and the remaining 15 marks with regard to personality and mental proficiency could be examined even in groups. It has to be kept in mind that constables do not require any special skill which has to be minutely adjudged. Main requirement of physical prowess and endurance have already been tested twice over. A glance was sufficient for judging the personality. It is often said in the Uniform circles that 'foot soldier' as they say 'is best who is incapable of discerning good from bad orders' of their Commanders.

126. An identical issue arose before the Apex Court in the case of *Sadananda Halo v. Mumtaz Ali Sheikh and Ors.* : (2008)4SCC619 , where large number of candidates were interviewed in groups and the Assam High Court after fixing a criteria that not more than 300 candidates could be examined in interview on a single day, quashed the selection. The Apex Court set aside the judgment finding that in an interview for constables, there was no requirement of testing their administrative or management capacity and that was only necessary to test their physical endurance, fitness and smartness in appearance.

127. No doubt, there was infraction of the circular, it would be inconsequential in these circumstances, especially for those candidates who had already secured more than the marks of the last selected candidate. Thus, in the opinion of the Court, deviation from the direction of the circular, would not be fatal to the present selection.

128. The contention that the trend of awarding higher marks in interview to those candidates who had secured less marks in physical test and vice-versa indicates that it was a predetermined exercise.

129 In the opinion of the Court, as already noted in the earlier part of judgment, this trend was common even to other recruitments covered by different enquiry reports which were saved, including enquiry No. 34 which deals with the second recruitment of civil police at Sitapur

130. in view of the discussions above and the findings recorded thereon, this and the connected writ petitions, succeed and are allowed. The various Government orders cancelling the recruitment by various Recruitment Boards and the consequential orders terminating the appointment of the candidates are also quashed, however, subject to the observations made hereinabove. In the circumstances of the case, no order as to costs.