

(1998) 04 AHC CK 0089

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 18252 of 1997

Surendra Singh Negi and 27 Ors.

APPELLANT

Vs

Union of India & 6 Ors.

RESPONDENT

Date of Decision: April 2, 1998

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: O.P.Garg, J

Final Decision: Dismissed

Judgement

1. There are seven connected writ petitions under Article 226 of the Constitution of India involving identical though familiar constitutional questions based on Articles 14 and 16, which are covered by the terse and emphatic enunciation of law by the apex Court. The setting too is familiar as also the submissions. For these reasons, a brief narration of facts and a common judgment in all the seven cases will suffice.

2. 1862 posts of Constables in Central Industrial Security Force (for short "CISF") in the pay scale of Rs. 8251200 were advertised in October 1996.

These posts were spread over various States of the country. Out of these 1862 posts, 115 posts were allocated to the CISF unit of Food Corporation of India, Gorakhpur and the same number of posts, i.e., 115 were allocated in CISF unit of Bharat Heavy Electrical Ltd. Jhansi. Separate Boards for recruitment/Selection of the candidates of the two units of Gorakhpur and Jhansi were constituted. The selection process commenced at both the units on 28th October, 1996. In Jhansi unit, the process was completed on 8111996 while in Gorakhpur unit it was concluded on 16111996. The Select lists were required to be approved by Deputy Inspector General, CISF (North Zone) Delhi. Sri Akbar Ali Khan was the DIG, CISF (North Zone) at the relevant time. The select list of Jhansi was approved by Sri Khan on 20111996 and on 28111996 he directed Sri Baral, Commandant/Chairman, Jhansi Board of Recruitment to complete the preenrollment formalities and to issue appointment letters in respect of the

candidates selected for BHEL Jhansi. Similarly Sri Khan, DIG (Northern Zone) accorded approval to the select list of Gorakhpur unit on 4121996 and Sri P.P. John Alex, Commandant and Chairman of the Gorakhpur Recruitment Board was directed to complete the formalities and issue letters of appointment to the candidates selected for Food Corporation of India, Gorakhpur.

3. Under the instructions contained in letter dated 17101996, issued by the Director General, CISF New Delhi, the DIG (Northern Zone) was required to forward the recommendations and proceedings of the Boards of Recruitment to CISF Headquarters for final clearance. Before final clearance in the matter could be accorded, a spate of complaints containing allegations of favouritism, nepotism, corruption and malpractices with regard to the selection process, in general and against Sri Akbar Ali Khan, DIG (Northern Zone) CISF, in particular, came to be made. The Director General, CISF ordered for discreet enquiries in the matter. Sri R.K. Shukla, DIG, Intelligence Operation made enquiries. Thereafter, Sri Kishore Kunal, IPS, Inspector General/CISF (Eastern Sector) Patna was deputed by the order of the Director General CISF to make enquiries. Sri Kunal submitted a preliminary report of enquiry on 941997 in which he reported that at least seven mohammedan candidates (all "Khans") have been selected on the intervention of Sri A.A. Khan, DIG, CISF (North Zone). It was reported that undue favour has been shown to these seven candidates on account of their proximity to the DIG ; that the two candidates, namely, S/Sri Mohd. Nafees Khan and Mohd. Naushad Khan belong to DIG's native place and were his neighbours ; the other candidates are either his relatives or have been in close touch with him for long. It was also hinted that Sri A.A. Khan, DIG had pressurised Sri Baral to include these candidates in the select list and Sri Baral succumbed to the pressure as he was given an indication that the DIG, Sri Khan will help Sri Baral in getting a extension of tenure in service. A probe was also made in respect of certain other candidates against whose selection complaints were made. Sri Kunal, Inspector General (E.S.) reported that about the selection of other candidates named in the complaint, it was learnt that the middle man (Dalai) had taken them to recruitment centre after taking some money but whether money played some part in the selection of the candidates was not confirmed. The probe, according to Sri Kunal was to go on and required some more time. A passing reference was also made by Sri Kunal to the circumstance that certain candidates of Eastern U.P. preferred to go to the distant Jhansi Recruitment Centre instead of applying and appearing before the adjacent Gorakhpur Recruitment Centre. This fact was intriguing and, according to Sri Kunal, it indicated that the candidates of eastern belt had been assured by some persons yielding authority or those who were very close to the authorities to get them selected from Jhansi Recruitment Centre. It was, in effect, a provisional report in the matter and the detailed report was to follow. On receipt of this report, the Director General scrapped the recruitment by order dated 1141997. This order was communicated to the concerned authorities on 1741997. On account of the scrapping of the whole

recruitment and selection process, the petitioner who claim themselves to have been duly selected by the Recruitment Boards of Jhansi and Gorakhpur and as approved by the DIG, Sri A. A. Khan, could not secure appointment letters. It is in the context of these facts that the petitioners have prayed for the relief that the order dated 1741997 issued by the Director General, CISF, New Delhi, scrapping the recruitments be quashed and that the respondents be commanded to send the petitioner for training of Constables at CISF and to appoint them on the said posts in pursuance of their selection held pursuant to the advertisement dated 28101996.

4. Counter and rejoinder affidavits have been ex. ranged. Heard Sri Ashok Khare, as well as Sri Aijaz Ahmad Khan, learned Advocates, on behalf of the petitioners and Sri S.C. Budhwar, learned Senior Advocate, assisted by Sri Sudhir Agarwal, Advocate on behalf of the respondents.

5. To begin with, it may be pointed out that the impugned order dated 1741997 whereby recruitment process as well as select lists have been scrapped, came to be challenged, inter alia, on the grounds that since the recruitments was made in consonance with the rules and the administrative instructions and since no illegality or irregularity has been committed, question of its cancellation did not arise ; that the decision to scrap the flawless recruitment/selection is clearly in flagrant violation of the principles of natural justice, inasmuch as, no opportunity was afforded to the petitioners to rebut the various complaints and in any case, there was no administrative ground justifying the cancellation of selection. It was also urged that the decision to scrap the selection is not based on substantial material and grounds and the impugned decision is arbitrary, capricious and irrational. Certain allied points, which may be discussed in the body of the judgment at the appropriate place, have also been raised to challenge the order to scrap the entire selection process and the select lists.

6. On behalf of the respondents, it has been maintained that the present writ petitions at the instance of the petitioners are not maintainable for the reason that the petitioners are only candidates in the process of recruitment, wherein even the panel has not become final having not been approved by the competent authority and, therefore, the petitioners have no legal right to challenge the decision of the Head of the Department to hold a fresh selection. It is also alleged that even if it be taken that the petitioners have been finally selected, they do not have an indefeasible right of appointment or to remain on the panel and, therefore, the petitioners have no locus standi to challenge the impugned order. The respondents have justified the order of cancellation of the select list and scrapping of the entire selection process on the ground that the matter involved recruitment of Constables in the CISF which have been entrusted with a very sensitive task of providing security to public sector undertakings and if the candidates find their entry in shady and dishonest circumstances, the purity of the organization would be seriously affected. Approval granted by the Zonal DIG (Sri A.A. Khan) has also been challenged

on the ground that he has flouted the circular letter dated 17101996 whereby it was made departmentally incumbent upon the DIG, Zone to obtain clearance of the Director General and since select lists were not approved or cleared by the Director General, they never became final and on the basis of the list, only approved by the Zonal DIG, the petitioners cannot stake their claim for training and appointment. It is further maintained that the scrapping of the selection process or the select list was necessary in view of the fact that there were serious complaints of dishonesty, favouritism and mal practices and that the action of the Director General, CISC has been approved even by the Home Ministry by their letter dated 14th May, 1997 and now fresh recruitment has to be held in which, with a view to mitigate the hardship of the petitioners, it has been provided that the petitioners shall be considered irrespective of the fact that they have become overage.

7. Before embarking upon the factual and legal controversies raised by the parties, a short and swift reference may be made to the fact that at the instance of the petitioners, this Court directed the respondents to bring on records the various enquiry reports submitted by Sri Kishore Kunal, IPS, Inspector General (E.S.) CISF Patna and to provide copies of the reports to the learned Counsel for the petitioners. An objection has been filed on behalf of the respondents indicating therein the reasons for not filing the reports, lest the departmental enquiry against Sri A.A. Khan, Zonal DIG may be adversely affected. I have given thoughtful consideration to the matter and find that no useful purpose would be served on bringing on record the various reports of Sri Kunal and to supply copies thereof to the petitioners.

8. The respondents have submitted the entire departmental records containing the complaints, enquiry reports and the orders passed by the departmental authorities for the perusal of this Court. There are as many as five reports dated 941997, 751997; 12 51997; 2161997 and 2681997 submitted by Sri Kunal, IG (E.S.), CISF, Patna with regard to the various allegations made about the malpractices adopted in the recruitment process at Jhansi and Gorakhpur Centres. I have perused all these reports as well as the orders passed by the departmental authorities and find that the appropriate excerpts may be produced in the judgment and by doing so, the very purpose for which the reports were directed to be brought on record, shall be served. I agree with the learned Counsel for the respondents that supply of the various reports of the enquiry to the petitioners is likely to affect the departmental enquiry against the Zonal DIG, Sri A. A. Khan who incidentally happens to be kingpin in the whole episode, without any corresponding advantage to the petitioners.

9. Let us first understand as to what is Central Industrial Security Force. CISF has been constituted under the Central Industrial Security Force Act, 1968 with the object of providing for the better protection and security of industrial undertakings owned by the Central Government as well as those in public sectors. The Act came to be amended in the year 1983 (Act No. 14 of 1983) and in the statement of objects

and reasons, it has been mentioned that the responsibilities of the Force have also grown greatly in magnitude as well as complexity. The force is today concerned, inter alia, with providing the security to highly sensitive undertakings like instrumentalities of Department of Space, Department of Atomic Energy, Oil Refineries, Petroleum Plants, Steel Plants and major ports. The security of these instrumentalities has a bearing not only on economic and industrial growth but also on the security and defence of the country. In view of these circumstances and also based on actual experience of the working of the Force, an urgent need was felt for making the Force an Armed Force of the Union and of giving some additional powers for dealing with the problems of security of the undertakings. Therefore, to make that Act more purposeful and an effective instrument for providing security and protection to vital industrial undertakings, amendments were carried out. In the year 1996, an advertisement was made inviting applications to fill up 1862 posts of Constables in CISF. These posts were spread over a number of industrial units in the country. 115 posts fell to the lot of BHEL Jhansi while the equal number came to the share of Food Corporation of India, Gorakhpur. At these two centres, recruitment Boards were constituted. Mr. R. Baral, Commandant was appointed the Chairman of the Recruitment Board Jhansi while Mr. John Alex Commandant became the Chairman of the Recruitment Board of Gorakhpur Centre. The Food Corporation of India, Gorakhpur comes under the jurisdiction of DIG East Zone, Patna while BHEL, Jhansi fell under the supervision of Sri A.A. Khan, DIG North Zone, New Delhi. Incidentally or deliberately the supervision of recruitment in respect of Food Corporation of India Gorakhpur came to be entrusted to Sri A. A. Khan, instead of DIG East Zone Patna. The recruitment centres of Gorakhpur and Jhansi, therefore, came under the supervision of Sri A.A. Khan Zonal DIG. Sri Khan hails from the district Ghazipur in eastern Uttar Pradesh and both the districts of Gorakhpur and Ghazipur are quite near to each other. After the recruitment was over and the select lists were prepared and sent from the two centres of Gorakhpur and Jhansi to Sri A. A. Khan for approval, a number of complaints came to be made to the Director General, CISF about the favouritism, nepotism and other malpractices as well as corruption in the selection of certain candidates. It was specifically mentioned in the complaints that some of the mohammedan candidates belonging to Ghazipur or nearby areas, who had proximity or association with Sri Khan, DIG were selected at his instance. The Director General, CISF took serious note of these complaints and directed that discreet enquiries into the complaints be made. The responsibility to make the enquiries was shouldered by Sri Kishore Kunal, IPS, Inspector General (E.S.) CISF, Patna. He submitted his report, or say, a preliminary report on 19/11/1997.

The relevant extracts of the report are reproduced as below:

".....It is learnt that following 7 candidates have been selected on the intervention of Sri A.A. Khan, DIG, CISF, N.Z. Delhi to the favour has been shown on account of the candidates' proximity to the DIG and not on account of any monetary consideration. The two candidates belong to the DIG Sri Khan's native place and are

his neighbors The other banditries, who all are Khans, are his relatives or have been in close touch with him for long.....

The allegation of favouritism was further confirmed by DIG Sri Shahid Ahmad, IPS who was DIG E.Z. Patna earlier.....

Sri R. Barai who was the Chairman of the Recruitment Board had informed him on telephone from Jhansi that Sri Khan had camped there and forced him to take 7 candidates of his choice. Mr. Baral was reportedly in tension, while doing so. But it is a fact that he succumbed to the pressure and obliged Sri Khan.....

About the selection of other candidates named in the DIG's letter, it was learnt that one middleman ("daial") had taken them to the recruitment centre after faking some money but whether money played some part in the selection of the candidates is not confirmed. That probe is still on and it will require some more time. The identity of Bhim Singh and Julfiqar Khan figuring in the complaint to the D.G. is not established so far. Some more details are required.

It is intriguing to learn that the candidates of eastern U.P. preferred to go to the distant Jhansi Recruitment Centre instead of adjacent Gorakhpur Recruitment Centre. It clearly indicates that they had been assured by some persons yielding authority or by those who were very close to the authorities....."

On the receipt of this report, the Director General CISF passed the following order on 1141997:

"1. Scrap this recruitment.

2. Put up when Sri Kunal's final report is received for necessary actions against the officers.

3. This letter be placed on your record and only my specific relevant direction be sent to DIG/personnel."

This order was sought to be implemented by DIG, Intelligence and Operations. The Director General CISF appeared to be of the view and rightly so, that the department cannot have youngmen coming through unfair test or by paying money. They will, according to the Director General, only indulge in corruption, for the rest of their service in CISF.

10. After scrapping of the recruitment, Sri Kunal submitted four more enquiry reports, stage by stage. A summary of enquiry reports submitted by Sri Kunal is to be found on the note sheet of the departmental file brought before this Court. Extracts of the relevant note prepared by Sri R.K, Shukla, DIG/Int. & Ops. submitted to Director General CISF are as follows:

"Sri A.A. Khan (Zonal DIG) visited Gorakhpur and Jhansi during the time of recruitment and had pressurised Sri R. Baral, Presiding Officer of Jhansi recruitment

board to select at least 07 candidates without proper test who belong to his native village as well as adjoining areas.....

One of the selected candidates, viz.,who had gone to Jhansi instead of Gorakhpur which is nearer to his native village, informed IG/ES during enquiry that one.....of village Jangirpur, District Ghazipur had taken about a dozen candidates from Gazipur to Jhansi and had collected Rs. 36, 000 from each of them.....In any case, the motive behind the Gazipur candidates to appear at Jhansi is obvious.

Substandard candidates were selected on the basis of either undue favour of money, One of the selected candidates.....

District Ghazipur selected from Gorakhpur was called by IG/ES. His physical measurements were taken. He could not expand chest more than 4 cms. Whereas the minimum requirement for chest expansion is 5 cms. Similarly IG/ES physically found one selected candidate.....vill.

Mohamadpur District Gorakhpur, selected at Jhansi was having knock knees. Both these candidates should have been rejected at the first instance. Their Selection confirms the allegations that people were selected on consideration other than merit.

As a test case, an officer was sent in cognate to the village of Sri Khan. He had gone there with a view to get somebody recruited in CISF. In confidence, people mentioned to him that he should meet Sri Zannat Kamrad, an uncle of Sri A.A. Khan who would help him in the recruitment. The ongoing rates were quoted as Rs. 25, 000 per candidate. It was also clarified that this facility was available not only to candidates of minority community but also to the candidates of majority community. One Md. Allaudin and Anwar also play a role in the CISF recruitment. The villagers also mentioned that in the past Sri Khan had got several candidates recruited like this.

Another probe was sent to the native village of Constable Bhim Singh. He met a person, viz., Sri Ram Lal, S/o Sri Rambadan Yadav, who supplies milk in the house of Bhim Singh. Ram Lal advised the officer to meet Bhim Singh who would get his candidate recruited easily for a consideration of Rs. 20, 000 25, 000. Constable Bhim Singh was earlier orderly of Sri A. A. Khan when he was Commandant, BCCL Jharia. At present he is working at the residence of Sri A. A. Khan.

During recruitment at Gorakhpur when the role of money started coming out in open, a good number of telephone calls were made to our office at Patna. DIG/EZ Sri Shahid Ahmad sent a message to Sri Sayeed Yakub, Dy. Commandant to visit Gorakhpur and submit a report about the allegation of corrupt practice. This report was never submitted. Sri Yakub had served earlier under Sri A.A. Khan. The inference is not difficult to make.

Sri H. Hanumanthappa, Asstt. Commandant, FCI Gorakhpur was aware of these complaints. He also saw some candidates sitting in the house of one SI/Min. B.N. Rai during recruitment period. In the presence of Sri Hanumanthappa, Sri Khan asked Sri John Alex, AIG, Presiding Officer of the Board at Gorakhpur to recruit his candidates. Sri Alex refused to recruit people on consideration other than merit. Thereafter Sri Khan remained present in the field and threw his weight on the subordinate officers like Asstt. Commandant, Om Prakash and Inspector Hindolia to get his candidates through.

Naik Zulfikar Khan who also figures in the complaint has managed to get at least 06 candidates from his area recruited in this recruitment. He was present at Gorakhpur/Ghazipur without any authority. He was even asked by Sri Hanumanthappa, Asstt. Commandant to return to his unit at Gazipur but he did not. He remained there from October 2529, 1996. Inspector C.P. Singh of CISF Unit, GOF, Gazipur confirmed that he was sent to Gorakhpur on the instructions from Sri Khan but was shown on administrative duty in the unit, Naik Sri Zulfikar Khan frequently visits the native place of Sri A.A. Khan to supervise the construction of boundary wall on the land of Sri A.A. Khan. It is not surprising that Naik Zulfikhar Khan was favoured for selection of his candidates from his area. Md. Feroz Khan above falls in this category.

The distribution of candidates selected both at Gorakhpur and Jhansi districtwise presents an interesting picture. Out of 11 candidates selected at Gorakhpur 09 are from Ghazipur and 01 from Gorakhpur and 01 from Varanasi. Similarly at Jhansi out of 08 Muslim candidates selected, 07 are from Gazipur and 01 from Bulandshahr. The Muslims are distributed all over in UP and the places where they have sizeable population are Meerut, Aligarh, Rampur, Lucknow, Kanpur etc. Not a single candidate has been picked up from there. These figures only confirm the allegations against Sri Khan."

11. Sri Ashok Khare, learned Counsel for the petitioners urged that the reports submitted by Sri Kunal after scrapping of recruitment of the Director General, CISF on 1141997 cannot be taken into consideration. According to the learned Counsel, a decision taken by the respondent authorities is to be justified only on the basis of the evidence existing on the date on which the decision has been taken and no subsequent reason can be added either by means of an affidavit or otherwise, nor any material supplemented which comes into existence on a date subsequent to the decision. In order to fortify his submission that the material which has come into existence subsequent to the date of the decision is totally irrelevant, learned Counsel placed reliance on A.I.R. " 1952 SC 16 (Paras 8 and 9) Commissioner of Police v. Goverdhan Das Bhanji, AIR 1978 SC 851 (para 8) Mohindra Singh Gill v. Election Commission of India, AIR 1987 SC 63 (para 2) Ramveer Jatav v. State of U.P., AIR 1980 SC 1502 (paras 16 and 17) Rajamalliah v. AnilKishore and AIR 1982 SC 872 (para 9) Parash Ram Thakur Das v. Ram Chandra. On the strength of these rulings, it

was pointed out that the Hon"ble Supreme Court has categorically held that there can be no ex post factors recording of reasons and in one case where reasons were recorded on the date succeeding the date of decision, even there the action was invalidated. Reference was also made to AIR 1970 SC 494 (paras 9, 10 and 11) *Rayala Corporation v. Director of Enforcement* and AIR 1991 SC 385 (para 5) *Jaswant Singh v. Stats*, in support of the contention that the impugned decisions were quashed as no material in support of the decision existed on the date of taking of decision and that the collection of the material subsequent to the impugned decision was totally irrelevant.

12. I have thoroughly studied the above rulings and find that the observations made therein cannot be transplanted to the facts of the present case. A number of other rulings were cited by the learned Counsel for the petitioners. At this stage, it would be worthwhile to mention that reference to a plethora of rulings of the Supreme Court to support a particular point by culling out certain disunited sentences and observations is not proper. A decision of the Supreme Court, or for that matter, of any High Court is only an authority for what is actually decided. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved or assumed to be proved since generality of the expression which may be found there is not intended to be exposition of the law but governed and qualified by a particular fact of the case in which such expressions are to be found. It would, therefore, be not profitable to extract sentences here and there from the judgment and to build upon it, because the essence of decision is its ratio and not every observation found therein. The enunciation of the reason or the principle on which a question before a Court has been decided is alone binding as a precedent. This aspect of the matter came to be considered by Supreme Court in the case of *Union of India & Ors. v. Dhanwanti Devi & Ors.* (1996) 6 SCC 44 wherein it was observed that it is only principle laid down in the judgment that is a binding law under Article 141 of the Constitution. A deliberate and judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue, may constitute a precedent, no matter for what reason and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi. It was further observed that in order to understand and appreciate the binding force of a decision, it is always necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word, or clause or sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and just and to employ an intelligent technique in the use of precedent.

13. Viewed from the above angle, I find that the various rulings relied upon by the learned Counsel for the petitioners are wide off the mark. The submission that the

subsequent enquiry reports are to be rejected as they amount to postdecisional enquiry appears to be based on the premise that the Director General CISF had no material at the time when he scrapped the recruitment or that he had passed the said order without gathering the relevant facts. This submission of the learned Counsel is not well merited for one simple reason that the Director General was cautious enough in obtaining a report, may be a preliminary enquiry report, on the various complaints received by him and prima facie, after receipt of the preliminary report dated 19/4/1997, he was satisfied that Sri A.A. Khan, DIG (N.Z.) had been instrumental in defiling the purity of the recruitment inasmuch as, he has pressurised the Chairman of the Recruitment Board at Jhansi to recruit certain candidates belonging to the Mohammedan committee and who belonged to his native place or were close to him. There were other circumstances, including the past service record of Sri Khan which impelled the Head of the Department to take the bold decision to scrap the recruitment. The subsequent reports of enquiry not only unravel the truth but also support and lend assurance to the stand taken by the Director General, CISF in the matter. The allegations which were made in the various complaints were found to be true and on enquiries, the undesirable role of Sri A.A. Khan in influencing the Chairman of the two Boards to recruit the candidates, some of whom should have been rejected outright at the preliminary physical test, came to be exposed. The preliminary report submitted by Sri Kunal on 9/4/1997 was sufficient to justify the order of scrapping of the recruitment. The subsequent reports may be relevant for supporting the departmental enquiry, which has been initiated against Sri A.A. Khan, the then DIG (N.Z.) or to prove various allegations against him. A faint suggestion was also made that the subsequent enquiry reports as well as preliminary enquiry report dated 19/4/1997 were totally unreliable and were based on no evidence as certain inferences have been drawn on the basis of conjectures and surmises. It was also urged that these reports have been prepared by an officer of the CISC itself and, therefore, they may be treated as tainted and in any case, these reports have been submitted with a view to justify the impugned decision taken by the Director General, CISF. Sequel to the above submission is the argument that in the light of the decision in 1987 (4) SCC431 (para 16) K.I. Shparrrd v. Union of India and 1989 (1) SCC 765 (paras 12 and 13) H.L. Trehan v. Union of India the post decisional hearings are violative of the principles of natural justice. In the view of the learned Counsel for the petitioners, the subsequent reports were nothing but futile exercise of an attempt to justify the order of scrapping of the recruitment. A number of rulings, namely, AIR 1972 SC 330 (para 2) B.E. Supply Company v. Workmen, AIR 1961 SC 1245, Jagan Nath Prasad Sharma v. State of UP., AIR 1977 SC 1512, State, of Haryana v. Rattan Singh, AIR 1970 SC 540 (para 15) Tribhuwan Parikah v. Union of India, AIR 1971 SC 746 (para 3) Rukmanand Bairaliya v. State of Bihar and AIR 1971 SC 2451 Shiv Nath Singh v. Appellate Commissioner of Income Tax, were cited to indicate that in the absence of legal evidence a report of enquiry cannot be based on the suspicion alone and the conclusion drawn on the basis of suspicion, rumour, surmises and conjectures cannot withstand the scrutiny

of the Court. This again is a point which has been stated merely to be rejected. The enquiry reports were obtained by the competent authority to use them as a plank to take further departmental action against Sri A.A Khan. DIG. For our purpose, the various subsequent reports are relevant only to indicate that the facts contained in the preliminary report dated 1941997 on the basis of which the recruitment was scrapped were not wholly unfounded. The various complaints had a ring of truth and the preliminary report was not far away from the reality that Sri A.A. Khan, DIG and his stooges had their own part to play in getting certain candidates of their choice selected for extraneous considerations and not on merits. The overall view, of the matter has to be taken in a broad spectrum and no useful purpose is likely to be served by hairsplitting the enquiry reports and their contents.

14. Learned Counsel for the petitioners urged that the cancellation or scrapping of the recruitment has very serious repercussions and impact not only on the candidates who have undergone the rigours of the test but also on the general public and department itself. It also casts aspersions on the members of the Recruitment Committee and therefore, the Head of the Department, or for that matter, competent authority has to exercise restraint in setting at naught the entire selection process. According to learned Counsel, it is in the rarest of rare cases where the process of selection can be cancelled and the select list scrapped if there is concrete and reliable evidence of large scale bungling, favouritism, nepotism, corruption or the like or if there is violation of fundamental procedural requirements. In support of his contention, the learned Counsel placed reliance on the decisions of this Court dated 841997 in Civil Misc. Writ No. 38772 of 1996, *Sri Niwas Singh & Ors. v. Union of India & Ors.*, (delivered by Hon'ble Dr. B.S. Chauhan, J.), 1995 (2) UPLBEC 985 *Ram Darsh Rai & Ors. v. State of UP. & Ors.* and decision dated 9121997 delivered by him in Civil Misc. Writ No. 38406 of 1996 *Amar Nath Singh v. Union of India and 4 others* and other connected writ petitions No. 36605 of 1997 *Jag Mohan and 6 others v. Union of India and 4 others*. Here again, one has to see as to what were the reasons which impelled this Court to quash the various orders whereby the recruitment process was scrapped and the select lists were cancelled. In all the three cases, referred to above, there was no allegation of dishonesty, corruption, favouritism or nepotism. Therefore, whatever has been stated, considered and decided in the said three decisions is hardly of any relevance and consequence in the present case. It is true that, as observed by Hon'ble Supreme Court in *Asha Kaul (Mrs.) and another v. State of Jammu and Kashmir & Ors.*, (1993) 2 SCC 573, that the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they had no legal right to appointment. No Government can adopt such a stand with any justification. Similarly, a Constitution Bench of the Supreme Court in *Shankerson B. Dash v. Union of India*, AIR 1991 SC1612, has observed that though a candidate who has been duly recruited and has no indefeasible right to get appointment, "it does not mean that the State has a licence of acting in an arbitrary

manner. The decision to fill up vacancies has to be taken bonafide for appropriate reasons and if the vacancies or any of them are filled up, State is bound to respect the comparative merits of the candidates as reflected at the recruitment test and no discrimination is permitted." But the fact remains that the above observations are not of universal application and came to be made in the wake of entirely different set of circumstances and facts.

15. Shorn of all superfluities, taking into consideration the various enquiry reports and the orders passed by the Director General, CISF, one cannot escape from the conclusion that it is a case in which purity of the entire selection process was tainted. An officer of the rank of DIG, who was expected to supervise the selection process of two different units, has himself been privy to the malpractices, inasmuch as, it was at his instance that certain candidates came to be selected even though they should have been eliminated at the initial physical test. The conclusions of various reports of enquiry have been jolted down in the paragraphs quoted above and it would be nothing but tautology to repeat the same facts and conclusions all over again. In brief, it may be mentioned that selection was neither fair nor proper. It was permeated with favouritism and nepotism on account of proximity of certain candidates with one of the particular high ranking officer who was having supervisory power over the two recruitment centres. Some of the candidates were selected on monetary considerations. Not only this, at least two candidates who were not found physically fit and should have been rejected at the initial stage, were selected. As said above, CISF is an organization which requires recruitment of persons of integrity and character. The recruited persons have to be put in charge of the security of the various Public Sector Undertakings which include even such sensitive undertakings of national importance and defence of the country like Space Research, Atomic Energy Plant and other important units. If the favouritism, nepotism, corruption and dishonesty have weighed in making the entry of certain selected candidates, the sensitive units and their security are not likely to be in the safe hands and, therefore, if the Director General, CISF, in his wisdom has considered it proper to annul the entire recruitment process, the Court should be slow enough to interfere with the decision of scrapping of the recruitment. The departmental authority is the proper Judge of his requirements. The State which encounters with diverse problems arising from a variety of circumstances, is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for appointment. In any case, the authority was satisfied that the recruitment process was not above board. The cancellation/scrapping of result does not constitute hostile discrimination and it is neither arbitrary nor unreasonable. It applies uniformly to all the candidates and selectees who have qualified and have become eligible for appointment. The order of cancellation attempts to strike a just balance between conflicting claims and it, therefore, cannot be condemned as arbitrary or discriminatory.

16. It is a case where the beneficiaries for selection cry for help against the injustice to them. Law has to take a larger look and has to take within its sweep a wide spectrum to neutralise the sins committed by those who were expected to be impartial and honest. In the policy decision, the authority must have discretion to adopt. Head of the Department has the power to change policy with reference to administrative exigencies and overall justice. Unless something arbitrary perverse, mala fide or extraneous or like factor is imported into the policy adopted by the Head of the Department, the Court cannot predicate the breach of Article 14 of the Constitution. In the present case, I am unable to see any vitiating factor and, therefore, unable to accede to the contentions of the petitioners. Moreover, once the order is found to be rational the fact that a few freak instances of hardship may arise on either side cannot amount to invalidate the order or the policy decision. Every cause claims a martyr and howsoever unhappy one be to see that he is being penalised for the sins of others, this is an area where in the absence of arbitrariness or irrationality, Court has to adopt hands off policy. Be that as it may, judicial policy cannot rush in where even administrative feet fear to tread.

17. The Supreme Court had the occasion to test the validity or otherwise of the action of the departmental authorities in cancelling the recruitment process or scrapping of the select list for variety of reasons. There are a series of decisions on the point, but without unnecessarily burdening this judgment with plethora of rulings, a reference may profitably be made to the decision of the Supreme Court in *Union Territory Chandigarh v. Dil Bagh Singh & Ors.*, AIR 1993 SC 796; *Preet Pal Singh v. State*, (1994) 5 SCC 695 ; *Hanuman Prasad & Ors. v. Union of India and another*, JT1996 (8) SC 510 and *Ranjan Sahoo & Ors. v. Sushant Kumar Dinda & Ors.*, JT (1996) 6 SC 515. The case of *Hanuman Prasad & Ors.*, (supra) is very near to the point in hand. The order of cancellation of appointment of the petitioners cannot be made subjectmatter of challenge before this Court and in any case, since the entire selection process stands tainted, the petitioners cannot complain about the cancellation of the select lists which were not even declared.

18. Sri Ashok Khare, learned Counsel for the petitioners further pointed out that unsavory feature of the case, which stares at our face is that the entire election process was cancelled without affording an opportunity of hearing to the petitioners and consequently the impugned order is in flagrant violation of the principles of natural justice. In the context of the case, like the present one, the matter stands concluded by the various decisions of Supreme Court reported in *Maharashtra State Board of Secondary Education v. K.S. Gandhi & Ors.*, JT 1991 (2) SC 296; *Bishwaranajn Sahoo* (supra); and *Hanuman Prasad & Ors.* (supra). It would also be profitable to refer to the two decisions of Supreme Court in *State of Madhya Pradesh & Ors. v. Shyama Pardhi & Ors.*, (1996) 7 SCC 118 and *Ashwani Kumar & Ors. v. State of Bihar & Ors.*, (1997) 2 SCC 1. The petitioners, as has been shown presently, have acquired no legal right merely because they appeared for certain test in pursuance of an advertisement for recruitment to the post of Constables. Therefore, question of

affording opportunity of hearing to them did not arise. Moreover, since the petitioners have been permitted and have been made eligible irrespective of bar of age, they are not likely to suffer any hardship if they appear in the fresh recruitment test.

19. It is now well settled that a person who is selected, does not on account of being "empanelled alone acquire any indefeasible right of appointment. Empanelment is, at the best, a condition of eligibility for purpose of appointment and by itself, does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. In this connection, a reference may be made to Shankarson Dash's case (supra) ; Sabita Pressed v. State of Bihar, (1992) 3 SCALE 361, State of Bihar & Ors. v. Secretariat Assistants Successful Examinees Union 1996 & Ors., (1993) 5 SLR 598 ; and State of M.P. & Ors. v. Raghubir Singh Yadav, (1994) 6 SCC 151. In Raghubir Singh Yadav's case (supra) it was observed that the instant case is not one of any accrued right. The candidates who had appeared in the examination and passed the written examination, had only legitimate expectation to consideration of their claims in view of the rules then in vogue. It was a case in which the rules, which were amended had only prospective operation. The petitioners, therefore, have no right to challenge the cancellation or scrapping of the select lists. As a matter of fact, in the instant case, select lists, though approved by the DIG (N.A.), were not cleared by the Director General, CISF as was contemplated in the circular letter dated 17101996. The select lists were not published and, therefore, the petitioners have no right, whatsoever, to complain against the cancellation of the select lists which have not yet been the light of the day.

20. Sri Ashok Khare, learned Counsel for the petitioners tried to drive home the point that the petitioners are, in fact, the victims of the ego problem which was going on between the Director General and his subordinate Sri A.A, Khan, DIG (N.Z.). A reference was made to the various malpractices, illegalities and instances of misuse of office by the Director General Sri R.K. Sharma, as published in the newspapers and as brought to the notice of the higher authorities by Sri A. A. Khan and others. To cut short the matter, suffice it to say that the petitioners do not stand to gain anything by painting black the image of the Director R.K. Sharma or to resort to mudslinging. The Director General, as said above, had to cancel the recruitment process on account of various complaints received against Sri A.A. Khan, DIG (N.Z.) who was in over all charge as Supervisor of the recruitment of the two centres at Gorakhpur and Jhansi. I also feel that it was a good case where the select lists should have been scrapped and a fresh recruitment ordered. The Act of the Director General was approved by then Home Ministry also. As a matter of fact, boot is on the other leg. The Director General's fair and bold stand to scrap the recruitment cannot, but be appreciated in the light of the facts and circumstances of the present case.

21. A futile and feeble attempt was made to categorise the cases, on the one hand, of those candidates against whom there were no allegations of corruption, favouritism and nepotism and, on the other hand, those specific cases of candidates against whom such allegations were found to be true on enquiries. It was also suggested that though the process of recruitment at the Jhansi centre may have been afflicted by various vices of corruption, favouritism and nepotism, such was not the case at Gorakhpur centre and, therefore, it would be highly unjust and unfair that the candidates of both the centres of Jhansi and Gorakhpur have been made to sail in the same boat. The substance of these submissions is that the sins of others should not be visited upon honest and meritorious selectees and if the segregation of the two categories is possible, the impugned order of cancellation of the recruitment process be confined only to those candidates who have been able to manage their selection by foul means. This submission on behalf of the petitioners is more in the nature of an argument of hardship than of law. The plea, in substance, is that the innocent candidates should not be penalised for the misdeeds of some of the candidates. I am unable to accept this submission. The centrewise or the candidatewise categorisation is neither possible nor workable. Sri A.A. Khan, DIG (N.Z.) was supervising the recruitment at both the centres at Jhansi and Gorakhpur. From the initial report of Sri Kishore Kunal, it is revealed that Sri A.A. Khan, DIG has exerted his undue influence on Sri R. Baral who was the Chairman of the Recruitment Board at Jhansi Centre and was successful in getting unfit Mohemmadan candidates finally selected. Sri Baral was out to readily oblige Sri Khan, perhaps the former thought that the latter may be in a position to help in getting extension in service. Unfortunate malady was not confined to Jhansi Centre only. The subsequent report dated 21/6/1997 submitted by Sri Kishore Kunal reveals disturbing state of affairs even at Gorakhpur recruitment centre. Sri A.A. Khan did not lag behind in adopting the same modus operandi at Gorakhpur Recruitment Centre which he had used at Jhansi Recruitment Centre. Sri Khan and some of his subordinates who had earlier worked under him had not left any stone unturned in getting certain candidates selected from Gorakhpur Centre by manipulating the things at the lower level though it is heartening to note that the Chairman of the Recruitment Board at Gorakhpur, Mr. John Alex, had not succumbed to the designs of Sri Khan or his subordinates. Therefore, it is quite evident that on account of the manipulations and machinations of Sri A.A. Khan and his subordinates and certain persons who acted as touts in collecting money, certain candidates at both the centres of Jhansi and Gorakhpur were finally selected. Their selection was either on account of their Relationship and proximity with Sri Khan or due to extraneous considerations such as corruption, favouritism and nepotism. The purity of the selection at both the centres stood defiled. It is no gainsaying that certain candidates were innocent or honest and only a few of them have resorted to various types of mal practices. The fact remains that the selection of the candidates at the two centres of Jhansi and Gorakhpur which were under the supervision of Sri A. A. Khan was stinking as it was the product of the partiality and unfairness. The

recruitment at both the centres, therefore, stood vitiated and in such circumstances, the individual innocence or honesty would have no place as it is well nigh impossible to unravel the various facts which are hidden in the penumbral zone, far away from judicial scrutiny by this Court. To put it briefly, the entire selection process at the two centres was a farce. There is no justification or basis to distinguish the cases of the candidates as it is difficult to segregate the gain from the chaff. In this connection a reference may be made to the decision of the Supreme Court dated 26/8/1993 in Special Appeal Nos. 4617 and 4618 of 1993, Jagdish Prasad Phool Bhati etc. v. Railway Board Rail Bhavan New Delhi. In that case, a select list on the basis of merit was prepared. Several complaints of favouritism, nepotism and corruption were made against the selection held by the Commission. The enquiry report revealed disturbing state of affairs. Certain candidates were included in the final list while those candidates who were on the top in the provisional list were dropped. The candidates who were in the provisional list were not included in the final list. They challenged the final list and the consequent appointments by way of writ petitions, which ultimately came to be transferred to the Central Administrative Tribunal, Allahabad Bench, Allahabad. The Tribunal divided the appellant-petitioners before it in nine categories while disposing of the petitions. The Supreme Court took the view that there was no basis or justification for the Tribunal to categorise the appellant-petitioners before it. Allowing the appeals, the judgment of the Tribunal was set aside and it was directed that the appellants before the Supreme Court shall be eligible to compete afresh irrespective of their ages.

22. In the instant case, the petitioners would get nothing by waging legal battle relentlessly. The respondents have already taken steps to hold fresh selections at both the centres and all the candidates who had applied pursuant to the advertisement of October, 1996 have been permitted and made eligible irrespective of their ages to appear for physical test, selection etc. This is being done with the approval of the Home Ministry of the Union of India. The petitioners as well as other similarly placed candidates have, of necessity, to undergo the entire selection process afresh. It is hoped that the respondents shall endeavour their best to ensure that the recruitment is made fairly and there is no scope for any doubt and suspicion. If necessary, the respondents may have an independent agency/body of recruitment so that the final results may infuse confidence and make people believe that the misdeeds complained of in the present case were things of past and part of an isolated chapter, which is not going to be repeated.

23. In conclusion, for the reasons stated above, all the seven writ petitions are devoid of any merit and substance and are hereby dismissed. No order as to costs is made. Petition dismissed.