

(2007) 05 AHC CK 0168

In the Allahabad High Court

Case No : Writ Petition Nos. 9786 (S/S) of 2006, 9688, 10374, 9675, 10381, 10361, 10392, 9678, 9631, 9672, 9676, 9896, 9960, 9974, 9942, 9943, 9715, 9585, 9629, 9764, 9789, 9787, 10135, 10160, 9936, 9937, 9939 - All service single of 2006 - 344 of 2007, 1569 of 2007,

Const. Mamta Yadav and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-05-2007

Acts Referred:

Uttar Pradesh Police Act, 1861 — Section 2

Uttar Pradesh Police Regulations, 1948 — Regulation 44, 445, 456

Citation : (2007) 05 AHC CK 0168

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Partly Allowed

Judgement

Devi Prasad Singh, J.—The controversy, involved in the bunch of writ petitions, relates to promotion of persons holding the post of Constables and Head Constable to the post of SubInspector, in common parlance called as rankers" promotion, in the Police department of State of Uttar Pradesh.

2. The petitioners, who are holding the post of Head Constable while approaching this Court under Article 226 of the Constitution of India, have submitted that while proceeding with the selection in question, the opposite parties have acted for extraneous reasons and tried to select the persons who are dead or against whom criminal cases of serious nature like dacoity, robbery, murder etc. including the departmental proceedings or vigilance enquiry are pending. The names of such persons who are already undergoing training in other wing of the Police department have been included in the impugned tentative list, although it should contain only the names of the persons selected on merit through the examination in the manner discussed hereinafter.

3. From the material on record, it appears that since last ten years, the persons working in the cadre of the Head Constable in the U.P. Police Department have

been deprived to avail promotional avenue of SubInspector on one or the other ground and also because of multiplicity of litigation. Broadly, twice the controversy cropped up in this Court and decided up to the stage of special appeal. Now, for the third time again, for the reasons hereinafter narrated, the selection process has been challenged on the ground of malice in law, arbitrary exercise of power and inclusion of names of such persons in the select list who cannot, otherwise, be found place in it, in accordance with law.

4. Before considering the present controversy and earlier litigation, it shall be appropriate that relevant Government circulars and orders should be considered in brief relating to the promotion of the Head Constables in the cadre of SubInspector. Regulation 44 of the U.P. Police Regulation, as amended from time to time, regulates the provisions relating to promotion of Constables and Head Constable for promotion to the cadre of SubInspector of Civil Police. According to Regulation 44, the Constables and Head Constable who have served not less than three years and whose age is not more than 40 years on first day of the calendar year possessing the qualification of Intermediate or equivalent shall be eligible to appear in the test for SubInspector against promotes quota. The candidates who qualify the test shall be entitled to appear in interview. It shall be subject to condition that he secured minimum qualifying marks provided in the Regulation. Four time candidates to the number of vacancies in the ranker cadre should be called for interview in order of merit from the select list.

5. In pursuance to the report of the U.P. Police Commission, 1960, the State Government had issued an order dated 29.11.1965 in pursuant to the power conferred by Section 2 of the U.P. Police Act to fill up the vacancies of promotees quota in the cadre of SubInspector of Police. According to the Government Order, the procedure for selection of Constable/Head Constables for their admission to the SubInspector of Civil Police cadre was to be done in pursuance to the written test as well as interview. Those who qualify in the written test and the, interview subject to physical fitness followed by drill and physical training examination were qualified to appear before a Board for the interview. Preliminary and final examinations were to be held and those candidates who acquire 30% marks in each and 40% aggregated the general test for final selection were eligible to appear for interview before the Board. Four time candidates to the number of vacancies reserved for rankers cadre should be called for interview strictly in order of merit. The Government Order dated 29.10.1965 was modified by subsequent order dated 15.7.1986. By another order dated 8.3.1995, issued in pursuance to the power conferred by Section 2 of the Police Act, 25% vacancies were reserved for Head Constables, who were qualified in view of the earlier Government Order dated 31.8.1977, to be promoted in order of seniority subject to fitness. Thus, out of 50% quota of the promotees, 25% vacancies were earmarked by the Government Order dated 8=3.1995 to be filled up exclusively by promotion of Head Constables subject to fitness and the remaining 25% were kept reserved to fill up through departmental examination in the manner referred to hereinabove in pursuance to the earlier Government Orders. By another

Government Order dated 8.3.1995 relaxation was granted to the Head Constables providing that their age should be not more than 55 and qualification up to Intermediate.

However, the Government Order dated 8.3.1995 was modified again by another order dated 19.5.1998. The order dated 19.5.1998 had again revived the earlier position and laid down that the entire 50% vacancies of the promotees quota of Constable/Head Constables shall be filled up by departmental examination. This amendment was enforced in the U.P. Civil Police as well as in the PAC. It also provides that in the Police department, compassionate appointment shall be made in pursuance to 1974 Rules applicable to Government employees. Various guidelines were provided to regulate the selection and appointment in the cadre of SubInspector through direct recruitment as well as by promotion. However, a plain reading of Government Order dated 19.5.1998 shows that it was enforced with immediate effect and is prospective in nature.

6. In view of the above, keeping in view the mandate of the Government Order dated 8.3.1995 and 19.5.1998, the Constables/Head Constables who were eligible against 25% promotees quota in order of seniority were remained entitled to get promotion in the cadre of SubInspector. The right of eligible candidates in order of seniority subject to fitness in view of the Government Order dated 8.3.1995 remained unaffected but remaining 25% departmental examination was to take places. All vacancies of the promotees quota covered by the Government Order dated 8.3.1995 should have been filled up in order of seniority subject to fitness to the extent of 25% and another 25% through departmental examination.

7. By office memorandum dated 19.5.1998, the Government has constituted a Board to fill up the vacancies of the cadre of SubInspector. According to the office memorandum dated 19.5.1998, the Director General of Police/Additional Director General of Police (Karmik) shall be its Chairman or President and three officers of the rank of Addl. Director General of Police or Inspector General of Police and a Secretary or Special Secretary of the Government of U.P. shall be the member of the Board. All officers of the rank of Deputy Inspector General of Police is to be appointed as Secretary of the Selection Board. The Board was empowered to fill up the vacancies of the cadre of the SubInspector of Civil Police as well as PAC (Platoon Commander).

8. The Government of U.P. has issued an order dated 3.2.1999 to fill up the vacancies of promotees quota available up to 31.12.1999. According to the Government Order dated 3.2.1999, out of 2956 vacancies of the cadre of SubInspector, 1478 vacancies fall within promotees quota, hence the Secretary of the Board was directed to take appropriate steps to fill up the vacancies. By another order dated 10.1.2000, 86 posts were also added in the promotees quota to be filled up by departmental examination to maintain the ratio of promotees and direct recruits at the rate of 50%. This order appears to have been passed in pursuance to the direction issued by the State Backward

Commission and also keeping in view the fact that in case of rankers" promotion, waiting list is prepared. Out of existing vacancies for promotion of rankers. Through departmental examination, 2% vacancies have been reserved for sports quota. The vacancies relating to sports quota, which are 31 in number, were forwarded to U.P. Police Sports Central Board, in short, the Sports Board. It is the Sports Board which was responsible to fill up the vacancies under sports quota.

9. By order dated 26.2.1999, reservation was provided to the female candidates while filling the vacancies of direct recruits. No reservation was provided against promotees quota in the cadre of SubInspector. By another Government Order dated 27.2.1999, the State Government had issued appropriate guidelines to fill up the vacancies of promotees quota. According to it, the departmental examination was divided into three parts.:

1. Preliminary written test. Those candidates who qualify in the preliminary written test were entitled to appear in the IT/PT test. For IT/PT test, 60 marks were earmarked for IT test and 50 marks for PT test. Minimum 50% marks were necessary to qualify IT/PT test. Those candidates who secure 50% marks in IT/PT test were held to be qualified for main written test.

2. Main written test. The main written test was divided into three parts Of 100 marks each. The first paper is of General Knowledge/General Hindi, consisting of 100 marks. Second paper is of Police Procedure and the third paper is of Law. Both contains 100 marks each. 40% marks in each paper and 50% aggregate marks have been provided as qualifying marks by the Government Order dated 27.2.1999. Those, who receive 50% aggregate marks in main examination, were held to be qualified for interview, test.

3. Interview. The interview comprises 100 marks, out of which 50% has been earmarked for oral test and 50% for service record.

10. By office memorandum dated 22.12.2001, the State Government had amended earlier order dated 19.5.1998 to the extent of the provisions contained in para 2(1)(2)(2) providing that out of 50% quota of promotees, 25% shall be filled up through rankers test (departmental examination) and remaining 25% from the Head Constables who had rendered satisfactory service, in order of seniority subject to fitness.

However, the office memorandum dated 22.12.2001 was again revoked by another order dated 20.8.2003 by which/the amendment was done to fill up 25% vacancies in order of seniority subject to fitness. Thus, the Government Order dated 19.5.1998, referred to hereinabove becomes operative in its original form. Thus, the present controversy correlates with the rankers" examination originated from the Government Order dated 3.2.1999. When the respondents have proceeded to fill up the vacancies keeping in view the Government Order dated 3.2.1999, unfortunately for one or the other reasons, the members of the Police force had indulged into legal battle. Accordingly, it is necessary at this stage to deal with the litigation in which the members of the Civil Police were indulged.

A. FIRST ROUND OF LITIGATION:

A Writ Petition No. 39756 of 1997, Ranbir Singh v. State of U.P. and others, was filed in this Court at Allahabad. The controversy, raised in the said writ petition, was that by Government notification dated 15.9.1997 and the consequential letter dated 18.9.1997, it was provided that Head Constables, who are discharging duty in the payscale of Rs. 16402900, may be confirmed with power of SubInspector or Assistant SubInspector to investigate criminal cases. The order was challenged on the ground that the decision, in question, creates distinct class in the same cadre in violation of Article 14 of the Constitution of India. During the course of hearing of the said writ petition, it was brought to the notice of this Court that for almost decades, no promotion was made from the post of Head Constable to the post of SubInspector, causing stagnation, in the cadre. Existence of almost 8000 vacancies in the cadre of SubInspector was also brought to the notice of the Court. Accordingly, it was argued that since regular vacancies were existed in the cadre of SubInspector, it was not justified on the part of the State Government to create distinct cadre of Head Constables empowering them to investigate criminal cases with certain riders. The writ petition was allowed and this Court had directed to fill up all the vacancies of the promotees quota expeditiously and preferably within a period of four months. The operative portion of the judgment and order dated 19.4.1999 is reproduced as under :

"In view of the uncontroversial averments in the writ petition, it is directed that the respondents shall forthwith resort to the process of fulfilling all the existing vacancies of the post of SubInspector first by making promotion to the extent of 50% (25% by departmental examination and the i5% on the basis of seniority subject to unfit) and after completing said promotion alone, direct recruitment shall be made on the post of SubInspector. The said process of making promotion must be completed within four months from the date of having received certified copy of the judgment which must be communicated by the learned Standing Counsel within three weeks from today. The earned Standing Counsel is directed to communicate this order to the concerned authorities.

The writ petition is allowed partly subject to the observations made above. There will be no order as to costs."

A Special Appeal No. 1372 of 1999, State of U.P. and others v. Ranbir Singh and others, was filed against the aforesaid judgment. A Division Bench of this Court had upheld the finding recorded by the Hon"ble Single Judge to fill up the entire vacancies of the post of SubInspector but set aside the order to the extent it related to allocation of investigating power to a Section of Head Constables. The operative portion of the judgment and order dated 9.12.2004 is reproduced as under:

"However, in view of the Full Bench judgment of this Court in the case of Vijay Singh v. State of U.P., following observations/made by the learned Single Judge

are required to be set aside.

"In view of the statutory provision of Police Regulations, particularly paragraph 51, which lays down that the powers and duties to investigate cases are that of SubInspector and Regulations 50 and 55(a) and (d), which provide that only in a specified contingency and subject to exception of Regulation 51(4) a Head Constable may be required, as an ad hoc arrangement to perform duties of investigation as Investigating Officer. This leaves no doubt that the duties of investigation cannot be conferred upon the Head Constable by a general order as is being done and sought through the impugned Notification dated 15th September, 1997 (Annexure5). The Government Notification, dated 15th September, 1997 itself provides that the said Notification shall not be implemented as a general Rule and that the Head Constable in the prescribed pay scale, if required to undertake investigation, as contemplated under the said notification, shall not be treated as a distinct class and to this extent the order dated 18th September, 1997 (Annexure5) shall also not be given effect to so as to create a different cadre and class having designation in contradiction to those contemplated under the U. P. Police Regulations."

Thus we do hereby set aside the said observations.

We also clarify that appointments by direct recruitment as well as by promotions may be carried simultaneously to the extent it is possible.

The Special Appeal, therefore, succeeds to the extent indicated above."

11. Thus, in view of the judgment rendered by this Court in Ranveer Singh's case, which was partly confirmed in the Special Appeal, it was incumbent on the State Government to fill up all the vacancies of the cadre of SubInspector to remove stagnation amongst the promotees but it appears that it has not been done and only a tentative list of 478 vacancies was released which is the subject matter of the controversy under these bunch of writ petitions.

B. SECOND ROUND OF LITIGATION :

When by the Government Order dated 29.2.1999, the authorities have proceeded to hold selection to fill up the vacancies of promotees quota, it was impugned by a number of Head Constables, preferring Writ Petition No. 9694 of 2000 in this Court of Allahabad (Triloki Nath Pandey and others v. State of U. P. and others"). The writ petition was filed on the ground that the Government Order dated 27.2.1999 amounts to repealing an earlier Government Order dated 29.10.1965 which is not permissible under law. A further argument was advanced that the State Government had framed Rule under Article 309 of the Constitution of India, namely Uttar Pradesh Government Servants Criteria for Recruitment by Promotion Rules, 1994 (In short hereinafter referred to as Promoters Rules of 1994). An argument was advanced that the Promotion Rules, 1994 has got overriding effect being framed under Article 309 of the Constitution of India and shall have got overriding effect. Holding of IT/PT test was also

challenged by the petitioners being contrary to 1965 Government Order as well as 1994 Promotional Rules. The writ petition was allowed by the judgment and order dated 10.3.2000 and the provision relating to IT/PT test was set aside by the Hon''ble Single Judge of Court and the circular dated 27.2.1997 was found to be too harsh.

Feeling aggrieved by the judgment of the Hon''ble Single Judge, the State preferred a Special Appeal No. 382 of 2000. The Special Appeal was allowed by the judgment and order dated December 22, 2004 and the State was directed to proceed with the selection process expeditiously.

PRESENT CONTROVERSY :

12. Subject to backdrop, discussed hereinabove, on 5th September, 1999, preliminary written examination was held, in which the candidates had appeared. The result of preliminary written examination was declared on 5.11.1999. The person, who were successful in preliminary written examination, were permitted to appear in infantry test, in short IT, and physical test, in short PT. The IT and PT test was conducted from December 13, 1999 to 16th December, 1999. The result of IT and PT test was declared on 11.2.2000, which was impugned in Writ Petition No. 9694 of 2000 at Allahabad, titled as, Triloki Nath Pandey and others v. State of U.P. The writ petition was allowed but subsequently, the judgment of the Single Judge was set aside in Special Appeal, as discussed hereinabove. In compliance of the recommendation of the Backward Commission dated 10.1.2000, 86 posts of SubInspector of Civil Police were carried forward to maintain the ratio of 50% by direct recruitment and remaining 50% by promotion of rankers. On account of litigation, referred to hereinabove, however, further recruitment process was withheld.

13. After final outcome of two round of litigation, discussed hereinabove, notification dated 9.12.2004 was issued for main written examination excluding 388 posts of rankers, who were eligible for promotion in order of seniority between 8.3.1995 and 19.5.1998.

14. Main written examination was held on 25.12.2005 and result was declared on 24.1.2006, in which the petitioners were amongst the successful candidates and they were called on to appear for interview. Four Selection Boards were constituted to hold interview. The interview was conducted from 15.5.2006 to 20.7.2006 by four Interview Boards. During the course of proceedings, the records were perused. It was found by this Court mat no separate marks were granted by the members of the Interview Board but common marks were granted to each candidate, duty signed by the Selection Board.

15. It has been submitted that more than 9600 candidates appeared for interview in pursuance to the departmental examination. 1176 persons have been selected in pursuance of the departmental examination on the basis of the combined merit list, released by the competent authority. There are 388 vacancies for promotion in order of seniority subject to fitness under the old

Rules, out of which 385 persons were selected in order of seniority for the post of SubInspector. It has been submitted by Shri Anil Saran, learned Standing Counsel that out of 388 persons, one person died during the pendency of the selection process which continued for about seven years. Out of 388, 385 persons were selected in order of seniority for the post of SubInspector subject to fitness and three posts were carried forward. Thus, the total persons whose result has been released by the impugned select list comes to 1561.

16. It has been submitted by the learned Standing Counsel that the selection against the existing vacancies whether by way of promotion or by direct recruitment on the post of SubInspector can be done only in pursuance to the order, issued by the State Government. The attention of the Court has been invited to Government Order dated 3.2.1999, filed as Annexure CA7 to the counteraffidavit, according to which, out of 2956 posts of SubInspector, 1478 posts were to be filled up through promotion. Later on, in pursuance to the other Government Order dated 10.1.2006, 86 posts were added again to maintain the quota of promotees and direct recruits at the rate of 50%. Relying upon the Government Order dated 3.2.1999, learned Standing Counsel submitted that the total vacancies notified to fill up by promotion, were 1478 plus 86. However, the petitioners' Counsel has submitted that total vacancies notified to fill up by promotion were 2450, relying upon an order, filed as Annexure 4 to the writ petition. However, it has been submitted by the learned Standing Counsel that the number of 2450 includes the posts falling within the category of Regulation 191 of the U.P. Police Regulations. According to Regulation 191, certain posts may be filled up from the Head Constables who were not more than 55 years of age to meet out the exigency of service. Para 191 of the U.P. Police Regulations has been made to ad hoc promotion to meet out the exigency of service with certain riders. Head Constables, who are permitted to discharge duty under Regulation 191, shall not be entitled to all the benefit which are available to regular promotees in the cadre of SubInspector.

17. During the course of arguments, the petitioners' Counsel has submitted that the Deputy Inspector General of Police, Establishment, vide his letter dated 24.11.2002, had informed the Director General of Police that 3500 vacancies are existing in the cadre of SubInspector, out of which, 2450 vacancies belong to rankers' quota for which the recruitment process started in 1999.

Controvert the submission of the petitioners' Counsel, it was submitted by Mr. Anil Saran, learned Standing Counsel that since the State Government had issued an order dated 3.2.1999 to fill up only 1478 vacancies with addition of 86 vacancies vide Government Order dated 10.1.2000, the department was not authorised to fill up more vacancies than what was notified by the State Government by order dated 3.2.1999 (Annexure CA6 ad CA7). After declaration of result on 11.1.2006, the present writ petition was filed by the petitioners whose names do not find place in the select list. However, during the course of argument, it was submitted by Mr. Anil Saran, learned Standing Counsel that the

impugned select list is tentative and conditional one and persons whose names have been included in the said select list dehors the Rules or certain Government Orders shall not be granted promotion.

18. On the other hand, Mr. Anurag Srivastava, learned Counsel appearing in one of the Writ Petition No. 9786(S/S) of 2006, has submitted that the select list dated 11.11.2006 is final one.

Mr. J. N. Mathur, learned Additional Advocate General of April 30, 2007, had made a statement on behalf of the State Government that the impugned select list is tentative and not final. It has also been submitted that the names of all those persons against whom criminal cases or departmental proceedings are pending shall be deleted from the select list. For convenience, the statement recorded in the order sheet date 30.4.2007 is reproduced as under :

"Shri J. N. Mathur, learned Additional Advocates General appears and submits that a select list, which is impugned in the writ petition is only a tentative list with a condition that the names of those persons, who are included in violation of Rules, like the persons against whom criminal cases and departmental enquiry is pending or persons suffered from other infirmities shall be deleted while preparing the final list for the purpose of training and appointment.

Shri J. N. Ma thus further made a statement that no person shall be sent for training in pursuance to the impugned tentative/conditional select list against whom either criminal cases are pending or departmental enquiry is pending. It has also been stated by learned State Counsel that process to fill up the remaining vacancies of 20012006 of Rankers has already been initiated and shall be completed very soon."

19. Though it has been submitted by the learned Addl. Advocate General Mr. J. N. Mathur that the procedure relating to sealed cover envelope shall not apply in the present case but at the same time, this Court has been informed that against 11 persons, the procedure relating to sealed cover envelope was applied and the result has been kept under sealed cover.

20. It has also been submitted mat all the members of the Selection Committee should have granted marks keeping in view the provisions contained in Regulation 445 of the U.P. Police Regulations. Mr. Amit Bose, learned Counsel appearing in Writ Petition No. 1024 of 2004 further proceeded to submit that in view of the provisions contained in para 456 of the U.P. Police Regulations, a person shall be deemed to be appointed only from the date he completes tainting and his seniority shall be reckoned from the date of result of qualifying test and training. Learned Counsel for the petitioner of Writ Petition No. 9688(S/S) of 2006 has proceeded to submit that the petitioner belongs to Scheduled Tribes category but his call letter was issued under Scheduled Caste category. He submits that in case his case would have been considered under the Scheduled Tribe category, he could have selected for the post of SubInspector.

21. The petitioners' Counsel has also pointed out that one Mukesh Yadav has been considered and selected for the post of SubInspector, though he rendered services for less than three years. An affidavit has been filed by the respondents indicating that Mr. Mukesh Yadav had completed three years of service on the post of Constable, hence his case was considered. According to the affidavit, he was appointed in the year 1997 on but the petitioners' Counsel Mr. Rajesh Chauhan has proceeded to submit that the date, referred by the respondent is the date of selection and not the date of appointment. According to the Police Regulations, a person shall be deemed to be appointed on the post of Constable only after completion of training. The appointment letters are issued after completion of training in the Police Training College. It has also been submitted that one Ralan Singh against whom departmental proceedings/criminal cases are pending had been selected on the post in question.

22. Keeping in view the argument, advanced by the petitioners' Counsel, records were summoned and the respondents were directed to receive instructions. On the basis of instruction, it was submitted that no criminal case is pending against Ram Ratan Singh and Mukesh Yadav who appeared in the test after three years of service.

In a nutshell, the submission of the petitioners' Counsel is that the impugned select list contains the names of persons against whom departmental proceedings and criminal cases are pending. Interview was held for 2450 candidates calling 9671 persons. In case the appointment was to be done only for 1478 candidates, then it was incumbent on the opposite parties to call only four time candidates to the number of vacancies which were to be selected. Since the field of eligibility was enhanced for more than four times; rather eight times while holding interview, the entire selection vitiates. It was also submitted that some of the persons like Mukesh Yadav and Ratan Singh and some other person were selected for extraneous reasons. It has also been submitted that no seniority list was prepared while filling the vacancies of 388 persons.

23. Learned Additional Advocate General, assisted by learned Standing Counsel, submitted that since the list in question was tentative and conditional one and the names of unqualified persons shall be deleted, no cause of action exists to challenge the impugned list. It has also been submitted that since the petitioner appeared in the examination and they are failures, the writ petition is not maintainable on their behalf. Supplementing the arguments, it has also been submitted that all persons, who had secured 50% marks, were called for interview keeping in view the order dated 21.5.1998, filed as Annexure CA2 to the counteraffidavit. It has further been submitted that the order dated 21.5.1998 has become part of the Police Regulations and the provisions, contained in Regulation 454, stand deleted. However no provision has been pointed out and no material has been placed on record which may indicate that earlier provision has been repealed. According to the learned Standing Counsel, since the order date 21.5.1998 has been issued in pursuance to the power

conferred by Section 2 of the U.P. Police Act, it has got statutory force and it has been incorporated in the U.P. Police Regulations, appended in the new edition of text. Further submission is that the provisions contained in the Government Order dated 28.5.1997 for sealed cover are not mandatory.

STATUTORY PROVISIONS:

24. Before considering the rival submissions of the parties Counsel, it shall be appropriate to consider the certain statutory provisions and Government notifications may be considered to resolve the present controversy. Regulation 445 of the U.P. Police Regulations deals with the procedure for selection and appointment on the post of SubInspector from the cadre of Head Constable. It provides that all those Head Constable and Constables who had rendered not less than three years of service shall be considered for promotion in the cadre of SubInspector. Subclause (4) of Regulation 445 provides that about four times the number of vacancies in the rankers' category shall be called for interview according to merit from the select list prepared on the basis of main examination. For convenience, Regulation 445 is reproduced as under :

"445. (A) Any such Constable or Head Constable, who is more than 40 years old and whose service is not less than three years, shall not be nominated for the selection for promotion in the cadre of SubInspector Civil Police. This age limit shall be required on the first January of the year of selection.

For the Constable, who has completed three years of service in the department, educational qualification must be intermediate or equivalent or he must have passed the Head Constable Civil Police Course. For the Constable having passed Head Constable Civil Police Course there shall be no restriction of educational qualification. For the Head Constables also there shall be no restriction of education qualification.

Note. Order of educational qualification as Intermediate instead of High School shall be applicable only to those candidates who come in the department after the issuance of the Government Order.

(B) In the Police Training College, Moadabad process of selection of Constables and Head Constables for the admission in SubInspector Civil Police course shall be as below:

(1) A Police prescribing the Rules regarding the eligibility of selection and inviting the eligible candidates that if they want that their candidature should be considered, they may apply for that, should be issued every year in the month of January. Detail publication of this notice should be made and it should be sent to those persons who have gone on deputation or leave. It shall be the duty of the District Police Superintendent/In charge of Units to ascertain that the notice be sent to all those places where their persons are working at that time. Six weeks time should be granted for filling the application. Applications so received should be scrutinized, for the purpose of excluding those applications which are not

eligible for selection under the prescribed Rules, in the office of Police Superintendent/Unit In charge.

(2) After preexamination of all those eligible candidates, who are suitable to be considered, should be held according to following procedure:

(a) One question paper, containing three parts having 50 marks, shall be prepared there shall be three legal questions, three procedural questions regarding Police and three questions of general knowledge and essay. Question regarding essay writing should be compulsory and each candidate should give reply of any two questions from two parts and of one question from third part of question paper or each candidate should give reply of total five questions from question paper. Compulsory question should be of 10 marks and other questions should be of 8 marks.

(b) Preexamination should be conducted under the supervision of Police Head Quarter on a certain date at all districts. Answer books should be sent to concerned Deputy Inspector General of Police, who will get examined to those by a Board of three Police Superintendents. Qualifying merit should be fixed 50 per cent to the maximum marks.

(c) After then one Board, constituted with Deputy Inspector Generals, one Commandant of PAC nominated by Deputy Inspector Generals of Police, Range and concerned local Superintendent of Police, should visit each district and should examine the character roll of all those eligible candidates, who have qualified the written examination. For the purposes of excluding physically disabled persons a general drill and physical examination of all such candidates should be conducted. Board should award marks, according to the standard fixed by Inspector General of Police, to candidates on their character roll and merit shown in the drill and physical examination.

(d) The candidates selected on the basis of such written examination, examination of character roll and physical examination should be deemed nominated persons of the range for the purposes of main examination.

(3) All the nominated persons of the range should appear in the written examination, which will consist three question papers (1) Law, (2) Procedure relating to Police and (3) Essay and General Knowledge, each of 50 marks. These questions shall have been prepared at central table, and the answer books shall be sent to the Headquarter of Deputy Inspector General of Police, who will get examined to those by a Board of Superintendents of Police, number of which will be depend on the number of candidates. The qualifying marks in this examination shall be 30% in each question paper and 40% in total and a list shall be prepared according to merit.

(4) About 4 times candidates to the number of vacancies in the ranker cadet should be called for interview according to merit from the aforesaid list. A Selection Board, consisting two Deputy Inspector Generals of Police on

Superintendent of Police nominated by Inspector General of Police, should take interview of the candidates. For the interview including service records 150 marks should be allocated and minimum 40% marks should be fixed for qualifying the same Board should examine the character roll as earlier and should grant the marks, thereafter adding the marks obtained by the candidates in the interview and written examination a final merit list should be prepared."

25. So far as the procedure provided by the aforementioned Police Regulations is concerned, it stands modified to the extent of repugnancy by order dated 21.5.1998, filed as Annexure CA2 to the counteraffidavit. It has not been disputed that the order dated 21.5.1998 was issued in pursuance to the powers conferred by Section 2 of the Police Act. The provisions, contained in the Police Regulations, are the compilation of orders issued by the State Government from time to time in pursuance to the powers conferred by Section 2 of the Act.

26. According to the Government Order dated 27.2.1999, all those candidates who secured 40% marks in aggregate shall be called for interview. Relevant portion (para 8) from the Government Order dated 27.2.1999 is reproduced as under :

So far as the other procedure provided in the Government Order governing the examination in question, discussed in the preceding para is concerned, it need not require reproduction.

27. Regulation 456 of the U.P. Police Regulations provides that the promotion on the post of Constable of Civil Police and Armed Police to the rank of Head Constable shall be made by seniority from the list of Constables qualified for promotion. It further provides that the seniority shall be determined from the candidates who had qualified from the Police Training School. For convenience, Regulation 456 of the Police Regulations is reproduced as under :

"456. The promotion of Constables of the civil and armed Police to the rank of Head Constable will be made by seniority on the list of Constables qualified for promotion, seniority for this purpose shall be determined

(a) amongst those qualified at the Police Training School in different session by the session at which they qualified;

(b) amongst those qualified at the same session by the aggregate of marks obtained;

(c) amongst those qualified at the same session and with the same aggregate marks by length of service."

28. In view of Regulation 456, it appears that the seniority should be reckoned from the date a person is appointed after successfully qualifying through passing out parade unless by some other order issued in pursuance to Section 2 of the Act, it has been modified.

29. The provision relating to sealed cover procedure is required by the

Government Order dated 28.5.1997. The provision has been notified by the State Government in pursuance of the Apex Court's judgment, reported in (1991) 4 SCC 109, Union of India and others v. K. V. Jankiraman and others. Since the Government Order has been issued keeping in view the judgment of the Apex Court, it has got binding effect in view of the provisions contained in Article 141 of the Constitution of India. A plain reading of the Government Order shows that it shall be applicable while holding selection and appointment in the Government service. Accordingly, it is incorrect to say that the Government Order dated 28.5.1997 relating to sealed cover procedure filed as AnnexureCA5 (in short sealed cover procedure) shall not be applicable to Police Constable. The sealed cover procedure shall be applicable while making promotion in the Police department also like other Government services.

30. According to the sealed cover procedure, in case during the course of selection, it is found that a departmental or vigilance enquiry or a criminal case is pending against the Government servant, then sealed cover procedure shall be adopted. Para 4 of the sealed cover procedure provides that the outcome of the selection shall be kept in sealed cover. Para 5 provides that the unfilled vacancy on account of adoption of sealed cover procedure shall be filled up on ad hoc basis from the eligibility list in stop gap arrangement which shall be subject to final adjudication of the controversy after opening of sealed envelope. For convenience, relevant portion from the Government Order relating to sealed cover procedure is reproduced as under :

31. A plain reading of the aforementioned provisions indicates that while adopting the sealed cover procedure, the result shall not be disclosed but shall be kept in sealed envelope which shall be opened at appropriate time in accordance with the provisions contained in the Government Order itself. A complete reading of aforementioned Government Order indicates that while proceeding with the selection process, the authorities have got no right to select a person and declare the results of such person against whom criminal case or a disciplinary enquiry is pending.

32. Keeping in view the facts and circumstances and the arguments advanced by the parties' Counsel, the controversy in question is discussed and resolved as under :

MAINTAINABILITY OF THE WRIT PETITION :

33. Mr. Anil Saran, learned Standing Counsel, Mr. Anurag Srivastava and Mr. Kapil Deo, learned Senior Advocate appeared for some other private respondents who were selected in the examination and proceeded to submit that the present writ petition is not maintainable. It has been submitted that in view of the settled provisions of law by the Apex Court, the candidates, who appeared in the examination and became unsuccessful, shall have no right to assail the outcome of the examination. The respondents' Counsel have relied upon the Apex Court's judgment reported in AIR 1986 SC 1043, Om Prakash Shukla v. Akhilesh Kumar

Shukla; 2002(2) SC 712, G. N. Nayak v. University; (1995) 3 SCC 486, Madan Lal and others v. State of J&K and others; AIR 1976 SC 2428, Dr. G. Saran v. University of Lucknow and others; 2006 SCC 395, K. H. Siraz v. High Court of Kerala and a Division Bench's judgment of this Court, reported in (1990) 1 UPLBEC 438, Dr. Y. K. Mathur v. ViceChancellor, Chandrashekhar Azad University. In all these cases, it has been settled by the Hon''ble Supreme Court and the Division Bench of this Court that in case the candidates appeared in the examination without raising prior grievance against the advertisement, Government Order or circular laying down the conditions for recruitment, then after appearing in the examination, in case the candidates do not succeed, they shall have no right to assail the outcome of the examination. However, so far as the present controversy is concerned, in one of the Writ Petitions No. 9632 (S/S) of 2006, Rama Shankar and others v. State of U. "P. and others, a relief has been claimed that the select list may be cancelled and denovo selection be held from the stage of interview. It has been submitted that number of candidates called for interview were not in conformity with the provisions of Regulation 455 of the U.P. Police Regulations. It is further submitted by the petitioners'' Counsel that sealed cover procedure was not adopted in view of the Apex Court''s judgment in Janki Raman''s case (supra) and followed by the Government Order dated 28.5.1997. When after perusal of the record, it was noticed that all, the members of the Selection Bench had not awarded marks separately, an objection was raised that the members of the Selection Committee had not applied their individual mind and only they had signed over the marks granted by the Chairman of the Selection Board.

34. It is settled provision of law that a thing should be done "in the manner provided by the Act and statute [vide 2006 (24) LCD 276, Dinesh Kumar v. State of U.P. and another; 2004 LCD 1164 : (2003) 2 SCC 111, Bhavnagar University v. Palitana Sugar Mill (P.) Limited and others; (2001) 1 SCC 482, Dr. Rajinder Singh v. State of Punjab and others; (1995) 1 SCC 156, State of Mizoram v. Biakchhawna].

35. Thus in case while proceeding ahead with the selection, the procedure provided by the relevant Rules, regulations and orders are not followed, then the Courts have got jurisdiction to interfere under the extraordinary power of Article 226 of the Constitution of India to judicially review the conduct of the examining body to the extent it relates to postadvertisements issues.

36. I have occasion to decide identical controversy which has been reported in 2007 LCD 513, Suraj Singh v. State of U.P. and others. After considering some of the judgments, relied upon by the respondents'' Counsel, I have proceeded to hold as under :

"43. Facts and circumstance of the present case seems to be entirely different. In the present case, writ petition has been filed by the petitioners before declaration of result after getting information relating to the involvement of unfair mean? and mala fide actions on the part of the respondents. While proceeding ahead

with the selection process the petitioners have approached this Court without awaiting the outcome of the examination in question. Petitioners have claimed that opposite parties have not only acted for mala fide reasons but also have violated the relevant Rules and regulations while proceeding with the selection process. They have approached this Court immediately without awaiting the outcome of examination. Accordingly the case of Om Prakash Shukla (supra) shall not come in the way to exercise the power of judicial review against the impugned selection process under Article 226 of the Constitution of India.

44. In the case of Madan lal (supra) relied upon by the respondents" Counsel also select list was challenged by the unsuccessful candidates. Accordingly, Hon"ble Supreme Court apart from deciding the controversy on merit held that petition was not maintainable. As held hereinabove, present writ petition has not been filed by unsuccessful candidates but it has been filed during the selection process on finding substantial illegalities and mala fide action on the part of respondents. The case of Madal lal (supra) shall also not come in the way to exercise power of judicial review under Article 226 of the Constitution of India."

37. Apart from above, it is also settled provisions of law that the criteria notified through the advertisement or Government Orders at the time of initiation of examination should be adhered to and not be flouted for any reason whatsoever. In case the authorities want to change or modify the criteria of a selection, then the vacancies should be read verities and denovo selection should be held. The selection process must complete in accordance with the statutory provisions existing at the time of advertisement, coupled with the issuance of the original circular relating to the holding of examination. No change can be made in the selection procedure after advertisement of vacancies [vide (2001) 10 SCC 51, Maharashtra SRTC v. Rajendra Babu; (1990) 3 SCC 157, N. D. Devi Katti v. Karnataka PHC; (1990) 2 SCC 669, P. Mahendra v. State of Karnataka; 2007 LCD 460, Lalit Kumar and others v. K. G. Uthappa].

In view of the above, since the grievance raised by the petitioners" Counsel mat the procedure prescribed by law existing at the time of initiation of selection was not followed during the course of examination, the present writ petition is maintainable. The judgment and order dated 10.3.2000, rendered in Writ Petition No. 9694 of 2000, Triloki Nath Pandey and others v. State of U.P. and others, was set aside in Special Appeal No. 383 of 2000. In the case of Triloki Nath Pandey (supra), the persons who had appeared in the examination, had assailed the advertisement and the procedure adopted by the respondents relating to IT/PT test. Accordingly, the Division Bench of this Court in me Special Appeal keeping in view the law, referred to hereinabove, held that those who appeared in the examination, have got no right to assail the procedure, adopted by the State while proceeding with the examination in question. The judgment in the Special Appeal does not come in the way on the analogy discussed hereinabove. The petitioners raised grievance relating to illegality committed during the course of examination on the basis of existing Rules.

38. The other argument, advanced by Mr. Anil Saran, learned Standing Counsel related to the question of maintainability on the ground that the selected have not been made party. Learned Standing Counsel relied upon the judgment of the Apex Court in the case of K. H. Siraz (supra). Submission of the learned Standing Counsel does not seem to extend any help keeping in view the observations made hereinabove to the effect that the involvement of substantial illegality during the course of selection process has been alleged by the petitioners. Moreover, Mr. J. N. Mathur, learned Addl. Advocate General himself has made, a statement on 30.4.2007 that the impugned select list is not final and it is tentative and conditional. In the case of K. H. Siraz, the final select list was impugned. Accordingly, the controversy/involved in the present case is different than the case which has adjudicated by the Apex Court in K. H. Siraz (supra).

39. Moreover, already substantial number of selectees have been impleaded in the writ petition, represented by Mr. Kapil Deo, learned Senior Counsel, Mr. S. K. Kalia, Mr. Anurag Srivastava and others. The right of selectees has been substantially defended by these Counsel raising various grounds. No personal allegation has been raised by the petitioners but procedural illegalities have been pointed out.

It has been held by the Apex Court in the case, reported in AIR 1983 SC 769, A. Janardhana v. Union of India and others, that whenever the action of the State is challenged or the criteria adopted by the Government is impugned in the writ petition, it is not necessary to implead every person as a party. In case the relief has been claimed against the Government and not against the individual, the impleadment of every person is not necessary in a writ petition. Moreover, in the present case, in the representative capacity, already some of the selectees have been impleaded, hence the writ petition is very well maintainable, Relevant portion from the judgment of A. Janardhana's (supra) is reproduced as under:

"36.....However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through Counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this Courts by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P. R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it

unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Rly., *Sucundmbad v. AYR Sidhanti*, (1974) 3 SCR 207 at p. 212 : AIR 1974 SC 1755 at p. 1759. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory Rule regulating to seniority of Government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be, noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and, therefore/ even if technically the direct recruits were not before the Court, the petitioner is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negated."

SEALED COVER PROCEDURE:

40. The Government Order dated 28.5.1997, the relevant portion of which has been reproduced in the preceding para shows that during the course of selection for promotion to next higher cadre of Government employees, the Selection Committee shall not declare the result of persons against whom departmental enquiry, criminal case, vigilance enquiry or enquiry by any other body is pending. Para 4 of the Government Order categorically provides that the recommendation of the Selection Committee shall be placed in the sealed cover. Para 5 further provides that the unfilled vacancy on account of adoption of sealed cover procedure, may be filled up from the merit list by selecting other persons in order of merit or seniority on ad hoc basis to meet out the exigency of service. The language of para 5 is quite clear and it provides that such ad hoc selection shall be done and the tenure of such selectees shall continue till the opening of envelope or next selection. The letter and spirit of the Government Order dated 28.5.1997 does not permit the Selection Board to declare the result of selectees even tentatively or conditionally as has been done with regard to 11 persons but should have been placed in sealed cover. According to the affidavit, filed by the learned Standing Counsel and compilation of chart provided relating to departmental or other enquiry and criminal proceedings, following are the Constables and Head Constables against whom the departmental and criminal proceedings are pending:

@ Table

DEPARTMENTAL PROCEEDINGS

SI. No. Name Father's name

1. Ram Kishore Shri Ram Babu
2. Ramesh Chandra Sharma Shri Siya Ram Sharma
3. Suresh Chandra Shri Nathuram
4. Ramesh Chand Shri Babu Lal
5. Lala Singh Shri Ram Nath Singh
6. Anup Kumar Shri Chaturdhar
7. Tularam Shri Udairam
8. Shri Krishna Shri Srinivas
9. Vinod Kumar Shri Premchand
10. HC141 Daidhchhail Shri Kaliram
11. ItwariLal Shri Ram Sahai
12. Raj veer Singh Shri Badan Singh
13. Vikram Singh
14. Om Prakash
15. Rajendra Singh
16. Kanhaiya Singh
17. Sahjad Yadav
18. Ram Manehi Yadav
19. ShriBajrangi Singh
20. Suresh Pal Singh
21. Mansharam
22. Swayamber Singh
23. Kamal Ahmad
24. Rajendra Prasad
25. Hira Lal Verma
26. Mahesh Singh
27. Babu Ram
28. Girish Chand Pandey
29. Devi Singh
30. Atar Singh

31. Hemraj Saroj
32. Shiv Pratap Singh
33. Chandramohan Tiwari
34. Ram Kesh Prasad
35. Ganga Singh
36. Jai Prakash Upadhyay
Shri Shyam Singh
Shri Budaram
Shri Fajituram
Shri Rajaram Singh
Shri Gajraj Yadav
Shri Mohan Yadav
Shri Kedar Singh
Shri Durg Singh
Shri Chandrika Prasad
Shri Prithvipal Singh
Shri Syiad Mohd. Rayees
Shri Baldev Prasad
Shri Ganga Ram
Shri Jamman Singh
Shri Hardev Prasad Yadav
Shri Shyam Bihari Pandey
Shri Puran Singh
Shri Kailash Singh
Shri Basantu
Late Palakdhari Singh
Shri Tarkeshwar Singh
Shri Shyam Lal
Shri Data Ram
Shri Nand Kishor

CRIMINAL CASES

SI. No. Name

Father's name

1. Ved Prakash Gupta

2. C. P. Shiv Kumar

3. C. P. Chhotey Lal

4. Ram Gopal

5. Jome Singh

6. Hori Lal

7. Ramchandra Singh

8. Tuphan Singh

9. Nareshpal

10. Viresh Kumar

Shri Ambey Saran Gupta

Shri Anganey Lal

Shri Naubat Singh

Shri Ram Swaroop

Shri Madhav Singh

Shri Ghasi Lal

Shri Nand Kishore

Shri Shiv Charan Singh

Shri Maheindra Singh Yadav

Shri Hari Singh

11. Satyanarayan Shri Ram Swaroop

12. Chandri lal Shri Dev Ram

13. Devendra Kumar Shri Ram Kishan Singh

14. Sohan lal Shri Sant Ram

15. Kesh Bihari Rai Shri Gazadhar Rai

16. Manoj Sonkar Shri Paggal

17. Kashi Singh Shri Palakdhari Singh

18. Tarkeshwar Nath Ojha Shri Dharmdev
19. Krishnapal Singh Shri Baburam
20. Maiku Shri Bardhu
21. Rajendra Prasad Mishra Shri Balbhadra
22. Bhashkar Mishra Shri Satyadev Prasad Mishra
23. Prem Bahadur Singh Shri Ramdas Singh
24. Gaya Prasad Shri Lallu
25. Tara Chandra Shri Jiya Nand Lal
26. Netrapal Singh Shri Radheyshyam Singh

41. From the facts, disclosed hereinabove, it is obvious that the result of a large number of candidates were declared who were not qualified on account of pendency of the criminal case or departmental enquiry. Though the select list indicates that all those persons against whom criminal case or enquiry is pending shall not be sent for training and accordingly, the statement of the learned Additional Advocate General that the select list is not final but it is tentative and conditional, shall not serve the purpose. The applicability of the sealed cover procedure means that the result should not have been declared by the authorities and it should have been kept in the sealed cover. The Selection Board should have kept the result under sealed cover without disclosing the outcome of the fate of the Constables/Head Constables with regard to their promotion to the post in SubInspector.

42. When during the course of proceedings of these bunch of writ petitions, grievance was raised by the petitioners' Counsel relating to noncompliance of the sealed cover procedure, only thereafter it appears that the opposite parties had proceeded ahead to prepare the details of Constables/Head Constables against whom criminal case or departmental proceedings are pending. Learned Standing Counsel has himself placed on record the letter dated 14.10.2006, followed by the letter dated 24.10.2006, issued by the office of the Director General of Police directing to submit the names of persons against whom criminal case or departmental proceedings are pending. Thus, it is evident that no basic work was done by the opposite parties before initiating the selection procedure to collect the particulars of the persons against whom criminal case or departmental enquiry is pending. Needless to say that such action on the part of the opposite parties in case would have been succeeded and the persons having tainted service career would have succeeded for promotion to the rank of SubInspector, the great damage could have been caused to the Police department. Selection of Constables or Head Constables involved in criminal cases or employees having criminal antecedent in the Police cadre shall result into adverse consequence and never serve the public good. On account of bad antecedent, such person may develop nexus with antisocial elements and

criminals and instead of serving the State, they shall work in the hands of antisocial elements. The Police department must take appropriate steps to weed out such persons against whom genuine complaints or criminal cases are pending and appropriate steps be taken to expedite the criminal cases as well as the enquiry proceedings pending against them.

43. In the case of Janki Raman (*supra*), Hon"ble Supreme Court upheld the adoption of sealed cover procedure and held that an employee has no right to promotion. Adoption of sealed cover procedure is necessary to ensure a clean and efficient administration. The relevant portion from Jankiraman's case (*supra*) is reproduced as under :

"29.....On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. This is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalized in presented. When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a Promotion Committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion....."

44. The judgment of Jankiraman has been followed and affirmed by the Apex Court in the cases, reported in (1993) 3 SCC 196, Delhi Development Authority v. H. C. Khurana (para 8); 1993 (3) SCC 204, Union of India v. Kewal Kumar; 1993 Supp. (2) SCC 225, State of M.P. and others v. Syed Naseem Zahir and others; 1993 (3) SCC 714, State of M.P. v. S. Bansal and others; 2000 (7) SCC 210, Delhi Jal Board v. Mohinder Singh.

45. In the case of H. C. Khurana (supra), the Apex Court proceeded to hold as under:

"8. These words clearly indicate that the sealed cover procedure was applicable, in cases where the "disciplinary proceedings are pending" in respect of the Government servant; or "a decision has been taken to initiate disciplinary proceedings". Thus, on a decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a Government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a Government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the Government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

46. In view of the settled proposition of law, while adopting the sealed cover procedure, it was not open for the opposite parties to declare the result of the candidates who were selected for the post of SubInspector, may be conditional, while releasing the impugned select list. The purpose of sealed cover procedure is not to disclose the outcome of the recommendations of the Selection Committee of the employees against whom criminal case or departmental proceedings are pending. Otherwise, there was no need to provide for adoption of the sealed cover procedure. Once the Government had categorically provided that the recommendations shall be kept in sealed cover of the employees against whom criminal case or departmental enquiries are pending, which has been done for eleven persons, then it is not open for the authorities to declare the result even conditionally. In case it is done, then it shall frustrate the purpose of sealed cover. After getting knowledge of the outcome of the Selection Committee, the successful candidates against whom departmental enquiry or criminal case is pending may adopt unfair practice to hushup the matter pending against them.

47. Though the State has tried to justify the impugned list stating that it is

conditional or tentative but as observed hereinabove, it shall not justify its conduct. The posts should have been filled up in pursuance to the provisions as contained in para 5 of the Government Order dated 28.5.1997 by making ad hoc appointment from the merit list. The persons whose result have to be kept in sealed cover could have been given notional promotion in case they are exonerated from the criminal case or departmental proceedings. Thus, the Selection Committee has failed to exercise jurisdiction vested in it while proceeding with the interview keeping in view the Government Order dated 28.5.1997. INTERVIEW:

48. The argument advanced on behalf of some of the petitioners by Mr. Manish Kumar and Mr. Rajesh Singh Chauhan is that the provision contained in Regulation 445 was not followed during the course of interview, according to which, four times candidates to the number of vacancies in the Rankers' cadre should have been called for interview. 1554 vacancies have been filled up through the examination in question, out of which 388 persons were to be selected in order of seniority subject to fitness, as discussed hereinabove. According to the petitioners' Counsel, 2450 vacancies were published but only selection was done to 1478 posts. It has also been submitted that 9671 persons were called for interview. In case, the selection was done only for 1476 candidates, then for interview, not over than 6000 candidates could have been called. This argument has been advanced by the petitioners' Counsel relying upon subpara (4) of Regulation 445 of the Police Regulations (supra).

49. The provisions contained in Regulation 445 were added in pursuance to the Government Orders dated 8.10.1975, followed by the order dated 31.8.1977. While issuing the order dated 27.2.1999, the State Government had not repealed or superseded the Government Orders of 1975 and 1977 which are the part of the U.P. Police Regulations. Accordingly, while interpreting the order dated 27.2.1999, the provisions contained in Regulation 445 cannot be ignored. For the purpose of interpretation, there should be harmonious construction and decision should be taken by combined reading of Regulation 445 and Government Order dated 27.2.1999 which provides that candidates obtaining 50% marks in the main examination shall be entitled to appear in the interview.

50. So far as the number of vacancies are concerned which are filled up from the examination in question, the argument advanced by Sri Anil Saran seems to be correct. According to the Government Order dated 3.2.1999 (Annexure 7), the department was directed to fill up only 1478 posts out of 2956. Undoubtedly, according to the official communication of the Police department, the vacancies seem to appear to be as 2450 but it has been denied by the learned Standing Counsel on the ground that some of the vacancies relate to employees of special category under para 191 and secondly, the department has got right to fill up only those vacancies which were officially notified by the State Government. The Government Order dated 3.2.1999 is only with regard to 1478 posts. Hence, the petitioners have no right to raise grievance for filling up 2450 vacancies.

Moreover, before the initiation of the examination, the petitioners have not challenged the Government Order dated 3.2.1999 by which 1478 vacancies have been notified. Hence, they have no right to raise such plea after declaration of the result conditionally, more so when they have participated in the examination.

51. It has been settled by the Apex Court by a catena of judgments that the provisions contained in U.P. Police Regulations are mandatory [vide AIR 1961 SC 751, *State of U.P. and others v. Babu Ram Upadhyay*; 1996(5) SCC 167, *M. Venkateshwar v. Government of A.P.*; (1996) 1 UPLBEC 658 (SC), *Ajit Singh Januja v. State of Punjab*; 2000(1) SCC 168, *Indra Sahani & v. Union of India*; 2003(12) SCC 10, *Nair Service Society v. District Officer, Kerala* and 2004 (9) SCC 165, *E. A. Sathyamesan v. V. K. Agnihotri*].

52. In another case, reported in AIR 2002 SC 2322, *Chandra Prakash Tiwari and others v. Shakuntala Shukla and others*, their Lordships of the Apex Court held that the provisions contained in U.P. Police Regulations are compilation of the Government Orders issued under Section 2 of the Police Act and being substantial law, they shall only be applicable for the employees of the subordinate cadre of the Police department. General a special bus nonderogate means that the special law shall supersede the general law. Accordingly, the provisions contained in U.P. Police f. Regulations have got mandatory force and while proceeding with the selection, the provisions contained in Regulation 445 should have been followed in its letter and spirit while calling the number of candidates.

53. Mr. Anil Saran, learned Standing Counsel has tried to defend the respondents relying upon the Government Order dated 22.2.1999 which provides that the persons possessing 50% marks may be called for interview in the written examination (*supra*). However, the argument advanced by the learned Standing Counsel seems to be misconceived. 50% criteria correlates with the eligibility of the candidates. The provisions contained in the said para (4) of Regulation 445 deals with the number of candidates who should have been called for interview. It means four time of the candidates who have secured 50% marks or 50% or more marks in the main written examination should have been called for interview in order of merit. On the other hand, it has been advanced that the provision of 50% marks added by the Government Order has got statutory force on account of the fact that it has been issued in pursuance to the power conferred by Section 2 of the Police Act. No doubt, the conditions provided have become part of the Police Regulations as submitted by the learned Standing Counsel but at no stretch of time, it has been demonstrated that subpara (4) of Regulation 445 has been deleted. A plain reading of para 4 of Regulation 445 read with order in question indicates that all those who shall secure minimum 50% marks shall be entitled to appear in the interview but that is subject to condition that they fall within the four time of the number of vacancies liable to be filled up. The opposite parties should have called only those candidates for interview who obtained 50% or more marks in the main examination to four time

to the number of vacancies. Accordingly, calling of higher number of candidates than what is provided in subpara (4) of Regulation 445 renders the interview illegal and unjustified.

54. It is settled proposition of law that while considering the statutory provisions for the purpose of interpretation, it should be done to its entirety. As discussed hereinabove, while issuing the Government Order dated 27.2.1999, the provisions contained in SubPara (4) of Regulation 445 have not been repealed. Accordingly, Regulation 445 and the Government Order dated 27.2.1999 should be given combined effect. According to Maxwell on the Interpretation of Statutes (12th Edition, Page 36) any construction which may leave without affecting any part of the language of a statute should ordinarily be rejected.

Relevant portion from Maxwell on the Interpretation of Statutes (12th Edition, Page 36) is reproduced as under :

"A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated."

55. In view of above the Court should always avoid interpretation, which would leave any part of the provision to be interpreted without effect. While doing so every clause of a statute is to be construed with reference to the context and other clauses of the Act to make a consistent enactment of the whole statute. According to Maxwell (supra at page 47) statutory language should not be read in isolation but in its context.

56. While referring a decision of House of Lord reported in *A. G. v. HRH Prince Ernest Augustus*, 1957 (1) All ER 49 (HL), in a famous treatise *Principles of Statutory Interpretation* by Justice G. P. Singh the views of Lord Tucker has been discussed with approval as under (9th Edition, page 34):

"In an appeal before the House of Lords, where the question was of the true import of a statute, the Attorney General wanted to call in aid the preamble in support of the meaning which he contended should be given to the enacting part, but in doing so was met by the argument on behalf of, the respondent that where the enacting part of statute is clear and unambiguous, it cannot be controlled by the preamble which cannot be read. The House of Lords rejected the objection to the reading of the preamble. Although, ultimately it came to the conclusion that the enacting part was clear and unambiguous. VISCOUNT SIMONDS (LORD TUCKER agreeing) in that connection said : "I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy."

57. Thus the exposition ex vicarious act us is a long recognized Rule of construction. Words in a statute often taken their meaning from the context of the statute as a whole. They are, therefore, not to be considered in isolation. Hon"ble Supreme Court in a case reported in AIR 1992 SCI, Mohan Kumar Singhania v. Union of India, has proceeded to held as under:

"However, it is suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, were are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of Statute/Rules/Regulations relating to the subject matter. Added to this, in construing statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominate purpose and underlying intendment of the said statute and that every statute is to be interpreted about any violence to its language and applied as far as its explicit language admits consistent with the established Rules of interpretation."

The aforesaid settled Rule of interpretation has been affirmed by the Apex Court from time to time in various cases including 1974 (1) SCC 596, M/s. Gammon India Ltd and others v. Union of India and others (para 19); AIR 1978 SC 995, M/s. Punjab Beverages Ltd., Chandigarh v. Suresh Chand and another (para 5); AIR 2002 SC 829, Kailash Chandra and another v. Mukundi lal and others (para 10) and AIR 2000 SC 66, Grasim Industries Ltd. and another v. State of M.P.

58. There is one more reason which requires consideration. During perusal of the record, it was noticed by this Court that all the members of the Selection Committee have not granted separate marks during the course of interview. While deciding the identical controversy, in the case of Suraj Singh (supra), I have proceeded to hold as under :

"84. The procedure adopted by the Selection Committee while awarding marks seems to be not sustainable on one other ground. In the order sheet dated 13.9.2006 and 7.12.2006 after perusal of record it was noticed that the members of Selection Committee constituted for both the posts have not granted marks separately. It was noticed by this Court after perusal of record that adjacent to the name of every candidate, the marks have been recorded and all the five members of the Committee have signed at the bottom of sheet containing marks granted in interview. The members of Selection Committee had not granted marks separately. Thus, it appears that the members of Selection Committee had not applied their mind by awarding marks at their end to each and every candidate. A natural inference which can be drawn from such action is that the member of Selection Committee had not applied their individual mind, while evaluating the merit of the each and every candidate. Accordingly, an inference may be drawn that marks were granted by only one person and other members are only signatory."

"86. The purpose of Constitution of a Selection Committee consisting two or more persons as its member is to Rule out to involvement of arbitrariness, corruption for extraneous reasons or considerations. Whenever a multiple members Committee is constituted then it shall always be incumbent that each and every member of such Committee must grant marks after evaluating the merit of the candidates. While finally evaluating the merit of the candidate the marks granted by each and every member of the Selection Committee should be added or clubbed."

59. Nothing has been brought on record by the respondents while filing affidavit, which may indicate that all the members of the Selection Committee had applied their individual mind during the course of interview while evaluating the merit of the candidates. Accordingly, it may be safely inferred that members of Selection Committee had either not applied their mind while discharging their duties during the course of interview or they had signed the interview sheet in a mechanical manner for some unforeseen reasons.

In view of the above, it was incumbent on the members of the Selection Committee to grant separate marks by applying their individual mind during the course of interview.

SELECTION ON THE BASIS OF SENIORITY :

60. 388 persons were to be selected in order of seniority subject to fitness on the basis of old Rules, referred to hereinabove, out of which, 385 persons have been selected and three vacancies have been carried forward. The argument advanced by Mr. Amit Bose, learned Counsel for the petitioners in one of the writ petitions that the selection held in order of seniority subject to fitness was done without publication of the seniority list. However, learned Standing Counsel submits that there is a seniority list and vacancies were filled up in order of seniority subject to fitness. However, the argument advanced by the petitioners" Counsel does not call for scrutiny at this stage when the petitioners have not raised grievances by approaching appropriate forum when the Government Order dated 27.2.1999 was issued. In case, there was no seniority list and the opposite parties have proceeded ahead to fill up the vacancies of Rankers without the seniority list, the appropriate stage to raise the grievance was before initiation of the selection process or at least before commencement of the selection process which has not been done. After two round of litigation, referred to hereinabove, now it is not open for the petitioners to advance such argument while assailing the impugned select list. Accordingly, it shall not be appropriate to interfere with the result of 385 candidates out of 388 who were selected in order of seniority subject to fitness. Already, a sufficient time has lapsed and the promotees have failed to taste the fruit of their experience and knowledge.

61. Inclusion of names of some of the persons who are getting training in other wings of the Police department like Reserve Police Lines on the post of SubInspector has not been denied. It is also not denied that one person whose

name has been included in the select list is dead. Thus, it appears that necessary groundwork was not done before holding the selection in question. The persons who had already joined in other wings of the Police department shall not be entitled to claim promotion on the post of SubInspector unless they give up the other posts. The persons, who have opted the other wing of the Police department ordinarily shall not be entitled to claim appointment through the present examination. The vacancies, left over of such persons as well as by dead persons should have been filled up by promotee along with other eligible candidates through the present examination.

CONCLUSIONS:

62. (1) From the discussions, made hereinabove, since substantial illegality was committed during the course of interview and procedure provided by the Police Regulations was not adhered to the present writ petition is maintainable.

(2) The number of candidates called for interview were much higher than what was required under para 445 of the U.P. Police Regulations which has increased the field of eligibility, affecting the rights of other possible selected which renders the selection illegal.

(3) Sealed cover procedure was not adopted by the Selection Board. Declaration of result even tentatively of the employees against whom criminal cases or department enquiry is pending is not permissible in view of the discussions, made in the preceding paragraphs. The Selection Committee should have applied its mind to fill up the vacancies on ad hoc basis in place of persons against whom sealed cover procedure could be adopted but the same has not been done.

(4) The members of the Interview Committee had not granted marks individually. Grant of collective marks by one person and singled by others shall leave the scope for arbitrariness on the part of the Chairman and the higher authorities which is not permissible. Every member of the Selection Committee should have granted marks to the candidates appearing in the interview.

(5) No grievance can be raised by the petitioners against the persons who were selected against 388 posts in order to seniority. The issue seems to be settled and not open for judicial review on the grounds, discussed in the preceding paras.

(6) Names of persons who are dead or getting training by option in other wings of the Police department should not have been included in the impugned tentative select list.

63. In view of the above, though there appears to be no irregularity committed for selecting the persons under old Rules to fill up 388 vacancies, in order of seniority, subject to fitness but there appears sufficient illegality committed by the Selection Board while proceeding with the interview and holding selection in pursuance to the departmental examination. Their Lordships of the Apex Court in the case, reported in (2003) 7 SCC 285, Union of India and others v. Rajesh P.U., Puthuvalnikathu and another's, held that in case the rights of some of the

persons selected in a test may be segregated from the persons who are not found fit for selection, then that may be done. Relevant portion from the judgment of Rajesh P. U. is reproduced as under:

"4. While so, on receipt of the communication dated 8.1.2001, the respondent herein filed OA No. 327 of 2001 before CAT's Bench at Ernakulam, Kerala State, challenging the cancellation. By an order dated 10.4.2001, the same appears to have been dismissed at the admission stage itself, observing that the action relating to cancellation having been taken bona fide and in public interest after due deliberation, does not call for interference and there was no legitimate cause of action. Aggrieved, the respondent moved the Kerala High Court in OP No. 13548 of 2001 (S). The Division Bench specifically noticed the nature of irregularities on the basis of which the selections came to be cancelled. It appears that the stand on behalf of CBI before the High Court was that though the allegations of nepotism and favoritism were found to be baseless, in some cases of evaluation of answer sheets incorrect answers were found to have been awarded marks and in certain other cases even correct answers were assessed to be wrong and denied marks. In some cases, one or more of the answer seem to have been not evaluated for awarding marks and overlooked, while excess marks than allowed seem to have been awarded in certain cases for one or the other questions. It appears that the Committee constituted meticulously and thoroughly identified all such cases individually and specifically found that 31 candidates who were otherwise ineligible, got in the process including in the select list and an equal number of eligible candidates, thus/were considered to have been denied of their legitimate claims. It is for this reason, ultimately, the entire selection was found to have been cancelled and not otherwise. The Division Bench seems to have directed the production of the Committee report and on being satisfied about the nature of irregularities that were only noticed by the Committee on an exhaustive review of the entire process and the answer papers of both the selected and unselected candidates.....

6. On a careful consideration of the contentions on either side in the light of the materials brought on record, "including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions which report itself seems to have been also produced for the perusal of the High Court there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English, and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that part, the Special

Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by reevaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an allpervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to other, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."

64. In view of the settled provisions of law, the candidates who have been selected against 388 posts, may, very well, be given their due rights by separating their names from the impugned tentative select list. Moreover, as admitted by learned Addl. Advocate General that the impugned select list is tentative and conditional one, there shall be no problem on the part of the authorities to separate the names of 385 persons (out of 388) who have been selected in order of seniority subject to fitness from the tentative list and promote/appoint them in the cadre of SubInspector forthwith.

For others, it shall be appropriate that fresh interview should be held keeping in view the observations made in the present judgment expeditiously. Needless to say that while preparing final select list after holding fresh interview in pursuance to the present judgment, the respondents shall delete the names of all the dead persons and the persons who are undergoing training by opting other wings of the Police department or against whom vigilance enquiry, criminal case,

departmental proceedings etc. are pending, keeping in view the observations, made hereinabove.

65. Before parting with the case, this Court appreciates the assistance, rendered by the learned Counsel appearing for the petitioners, particularly S/Shri Rajesh Singh Chauhan, Manish Kumar and Amit Bose and those appearing on behalf of the respondents, mainly S/Shri J. N. Mathur, Anil Saran and Anurag Srivastava.

66. In view of the above, the writ petitions deserve to be allowed in part. A writ in the nature of certiorari is issued quashing the impugned tentative select list dated 11.11.2006 to the extent it relates to the candidates who have been selected through departmental examination with natural consequence and the petitions are dismissed to the extent it relates to the candidates selected in order of seniority subject to fitness under old Rules.

Further a writ of mandamus is issued commanding the opposite parties to hold fresh selection through the Selection Board from the stage of interview keeping in view the observations, made in the present judgment and thereafter issue the final select list" of the selectees. Let necessary exercise be done expeditiously within a period of three months.

A writ in the nature of mandamus is also issued commanding the opposite parties to fill up the entire vacancies of the cadre of SubInspector to the extent it relates to the promotee expeditiously within a period of four months.

Subject to above, the writ petitions are allowed in part with no order as to costs.

The records, submitted before this Court in two sealed covers, shall be returned to the learned Standing Counsel forthwith.

Petitions partly allowed.