

IN THE COURT OF SPEICIAL JUDGE-II (PREVENTION OF CORRUPTION
ACT) (CBI), ROHINI, DELHI

ID No. 02404R0008692008

CC No. 37/2010

RC No. 3(A)/04/ACU.IX/NEW DELHI

- CBI Vs
1. Vidya Dhar, IAS
S/o Sh. Ram Swarup
R/o V & PO Dhabdhani, Tehsil & District Bhiwani,
Haryana.
 2. Sher Singh Badshami
S/o Late Sh. Karta Ram
R/o (i) 931, Sector-5, Kurukshetra, Haryan.
(ii) 327 Sector-4, M.D. Complex, Panchkula,
Haryana.
 3. Sanjiv Kumar, IAS
S/o Dr. Maheshwar Kumar
R/o Flat No. 6360, Sec.-C, Pkt. 6&7 Vasant Kunj,
New Delhi-70.
 4. Om Prakash Chautala
S/o Late Sh. Devi Lal
R/o (i) V & PO-Chautala, Tehsil – Dabwali,
Sirsa, Haryana,.
(ii) 231-232, Chautala House, Barnala Road,
Sirsa, Haryana.
(iii) Tejakhera Farm-House Village Tejakhera,
Tehsil Dabwali, Sirsa, Haryana.
 5. Ajay Singh Chautala
S/o Sh. Om Prakash Chautala
R/o (i) 231-232 Chautala House, Barnala Road,

Sirsa, Haryana.

(ii) 18 Janpath, New Delhi.

6. Smt. Prem Bahl
W/o Sh. Balbir Kumar Bahl
R/o House No. 925, Sec. 7, Urban Estate,
Ambala City, Haryana.
7. Smt. Shashi Malhotra
W/o Sh. Prabhu Sharan Rai Nayyar
R/o H. No. 10, Vikash Vihar, Ambala City, Haryana.
8. Smt. Krishna Gupta
W/o Sh. Om Prakash Malhotra
R/o H. No. 74, Vijay Nagar, Ambala City, Haryana.
9. Brahma Nand
S/o Sh. Chandgi Ram
R/o Village Ninar, Post Office Kaunt, Bhiwani,
Haryana.
10. Ms Vinod Kumari
D/o Sh. Harbans Lal Sharma
R/o 100, Ram Nagar, Bhiwani, Haryana.
11. Maman Chand
S/o Sh. Pala Ram
R/o (i) A-12/ Geeta Colony, Bhbiwani.
(ii) Village & Post Office Devasar District
Bhiwani, Haryana.
12. Sawan Lal
S/o Sh. Gurdayal
R/o 50, Kamala Nagar, Bhiwani, Haryana.
13. Smt. Kanta Sharma
W/o Sh. Bhim Singh Sharma
R/o 3928, Sector 22-D, Chandigarh.

14. Sh. Prabhu Dayal (expired before filing of the charge sheet)

S/o Sh. Aud Ram
R/o Village & Post Office Khabra Kalan,
Bhatukala, District, Fatehabad, Haryana.

15. Smt. Phool Khurana

W/o Sh. Bhupinder Pal
R/o Old Post Office Street, Bhuna, Fatehabad,
Haryana.
Present address : H. No. 1386, Village Bhuna,
Block-4, Tehsil Fatehabad, District Hissar, Haryana.

16. Harbans Lal

S/o Sh. Sadi Lal
R/o Village & PO Ramgarh, Near PNB, Ramgarh,
District Alwar, Rajashtan.

17. Ram Saran Kukreja

S/o Sh. Khem Chand
R/o 127, Vijay Colony, Jawahar Nagar, Hissar,
Haryana.

18. Udal Prasad Sharma (expired during trial on 05.12.2012)

S/o Sh. Badri Prasad Sharma
R/o 1398, Parvatia Colony, Faridabad, Haryana.

19. Brij Mohan (discharged on 23.7.2011)

S/o Sh. Shri Ram Sharma
R/o 365, Near Shradha Nand Park, New Colony,
Palwal, Haryana.

20. Chand Singh Verma

S/o Sh. Kirpa Ram Verma
R/o 591/18, Om Nagar, Khandsa Road, Gurgaon,

- Haryana.
21. Yogesh Kumar Sharma
S/o Sh. B. R. Sharma
R/o 860, Sector-7, Extn. Urban Estate, Gurgaon,
Haryana.
 22. Smt. Abhilash Kaur
W/o Sh. Sardar Singh
R/o 107, Pratap Nagar, Jail Road, New Delhi.
 23. Sher Singh
S/o Sh. Nand Ram
R/o Village & Post Office Mandhan, Tehsil Tosham,
District Bhiwani, Haryana.
 24. Anar Singh
S/o Sh. Neki Ram
R/o (i) H. No. C-37, Surya Vihar, Near Sec. 4, Police
outpost, Gurgaon, Haryana.
(ii) H.No. 1446 – Huda, Sector-6, Bahadur Garh,
Haryana.
 25. Smt. Kailash Kaushik
W/o Sh. Karna Singh Kaushik
R/o H. No. 1132, Housing Board Colony, Jind.
 26. Ajit Singh Sangwan
S/o Sh. Moji Ram
R/o Vidya Nagar, Mehram Road, Bhiwani, Haryana.
 27. Smt. Ram Kaur
W/o Sh. Om Prakash
R/o H. No. 1498, Urban State, Jind, Haryana.
 28. Mahavir Singh Lathar
S/o Sh. Balraj Singh Lathar
R/o Shadipur, Julana, District Jind, Haryana.

29. Narain Singh Ruhil
S/o Sh. Preet Singh
R/o (Present) H.No. 66, Officers Colony Kunj Pura
Road, Karnal, Haryana.
(Permanent): Village & PO Beholi, District Panipat,
Haryana.
30. Krishan Lal Narang
S/o Sh. L. R. Narang
R/o H. No. 1973, Sector-13 Urban Estate, Karnal,
Haryana.
31. Smt. Usha Rani
W/o Sh. Radha Krishan Chanana
R/o 847, Sector-13, Urban Estate, Karnal, Haryana.
32. Madan Lal Kalra
S/o Sh. Jai Lal Kalra
R/o (i) House No. B-4, D.C. Colony, Kurukshetra.
(ii) House No. 534, Modal Town, Jind Road,
Kaithal, Haryana.
33. Veer Bhan Mehta
S/o Sh. Thakur Das Mehta
R/o Ward No. 6, Village & Post Office, Indri District,
Karnal, Haryana.
34. **Shashi Bhushan (expired during trial on
12.11.2008)**
S/o Sh. Atma Ram
R/o H. No. 1142, Sec.-13, Urban State,
Kurukshetra, Haryana.
35. Dilbag Singh
S/o Sh. Lehri Singh
R/o House No. 320, Ward No. 1, Charkhi Dadri,

- District Bhiwani, Haryana.
36. Ram Kumar
S/o Sh. Bhana Ram
R/o Mandir Wali Gali-6, Patel Nagar, Kaithal,
Haryana.
37. Pushkar Mal Verma
S/o Sh. Ram Chander Verma
R/o H. No. 1360, Mohalla Shiv Colony, Opp.
Panchayat Bhawan, Narnaul, District Mahendergarh,
Haryana.
38. Durga Dutt Pradhan
S/o Sh. Maha Ram Sharma
R/o Gali New Sari, Sain Chowk Road, Narnaul,
Haryana.
39. Bani Singh
S/o Sh. Amar Singh
R/o Mohalla Sainipura, Mahendergarh, Haryana.
40. Smt. Daya Saini
W/o Sh. B. S. Saini
R/o H. No. 396/1, Sector – 44, Chandigarh.
41. Ram Singh
S/o Sh. Surat Singh
R/o Village & Post Office Sheikh Pura, District,
Karnal, Haryana.
42. **Puran Chand (Expired during trial on
03.12.2012)**
S/o Sh. Lachhman Das
R/o H. No. 301, Ward No. 11, Panipat, Haryana.
43. Sheesh Pal Singh
S/o Sh. Hoshiar Singh

- R/o (i) 1165, Sector-15, Sonapat.
(ii) 257, Sarojini Colony, Yamuna Nagar,
Haryana.
44. Smt. Rekha Sharma
W/o Late Sh. Ravi Dutt Sharma
R/o H. No. 438, Sec.-16, Punchkula, Haryana.
45. Smt. Raksha Jindal
W/o Sh.R. C. Jindal
R/o 1383, Sec.-15, Punchkula, Haryana.
46. Jeet Ram Khokhar
S/o Sh. Shobh Ram
R/o H. No. 326, Opposite Power House, Modal
Town, Rohtak, Haryana.
47. Smt. Nirmal Devi
W/o Sh. Dhambir Singh
R/o 813/23, DLF Colony, Rohtak, Haryana.
48. Amar Singh
S/o Sh. Ram Krishan
R/o Village & PO Meham, Mohalla, Kharikuri,
District Rohtak, Haryana.
49. Smt. Sudha Sachdeva
W/o Sh. R. S. Sachdeva
R/o H. No. 72A, Model Town, Near Shravan Jayanti
Park, Rewari, Haryana.
50. Darshan Dayal Verma
S/o Sh. Vasudev Prasad Verma
R/o 380, Agarsain Colony, Sirsa, Haryana.
51. Smt. Saroj Sharma
W/o Sh. R. B. Dutta
R/o H. No. 207, Sec.-7, Gurgaon, Haryana.

52. Tulsi Ram Ram Bihagra
S/o Sh. Ram Swaroop
R/o 251, Street-7, Gulabi Bagh, Rewari, Haryana.
53. **Nathu Ram (expired during trial on 17.01.2012)**
S/o Sh. Kurara Ram
R/o Village Adampur, Post Office Mandi Adampur,
District Hissar, Haryana.
54. Om Prakash Tiwari
S/o Sh. Mangat Ram Tiwari
R/o Nahoria Bazar, Sirsa, Haryana.
55. Bihari Lal
S/o Sh. Pat Ram
R/o 15/249, Bansal Colony, Sirsa, Haryana.
56. Rajender Singh Dahiya
S/o Sh. Hoshiar Singh
R/o H. No. 62, 8-Marla, Sonapat, Haryana.
57. Dalip Singh
S/o Sh. Chand Ram
R/o 245/5/3 Adarsh Nagar, Gohana, District
Sonapat, Haryana.
58. **Smt. Kamla Devi (expired before filing of the
charge sheet)**
W/o Sh. Ranbir Singh
R/o 174 L 9A), Model Town, Sonapat, Haryana.
59. Rajender Pal Singh
S/o Sh. Ranbir Singh
R/o House No. 3903/D, Sec. 22, Chandigarh.
(Permanent Address: 365, Jagat Colony, Bhiwani,
Haryana).
60. Sarwan Kumar Chawla

- S/o Sh. Manohar Lal Chawla
R/o 44, Madhu Colony, Behind Madhu Cinema,
Yamuna Nagar, Haryana.
61. Smt. Urmil Sharma
W/o Late Sh. Ramesh Chander Sharma
R/o 72, Krishna Colony, Yamuna Nagar, ITI Road,
Haryana.
62. Joginder Lal
S/o Sh. Ram Lal
R/o 1026, Dwarka Puri, Jagadhari, District Yamuna
Nagar, Haryana.

Date of concluding the final arguments : 17.12.2012

Date of judgment : 16.01.2013

J U D G M E N T

1. Two sets of interview award lists are placed before this Court. The axle around which the entire trial revolves is a short question: "Which set of the interview award lists prepared for selection of JBT teachers is genuine and which is the fake one?"
2. Sanjiv Kumar (A-3), an IAS Officer (1985 Batch) of Haryana Cadre, claims himself to be a whistle-blower. He filed a writ petition (Cri.) no. 93/2003 in Supreme Court of India alleging that while he was posted as Director Primary Education-Haryana, he was pressurized by Om Prakash Chautala (A-4), the then Chief Minister of Haryana to replace the original

award lists prepared for the selection of JBT teachers with fake award lists. The genuine lists were prepared by the Selection Committees of various districts in Haryana after taking the interviews of the candidates. Sanjiv Kumar produced before Supreme Court of India a set of 15 award lists duly signed by the members of the selection committees and submitted that these fake lists were to be substituted in place of the original lists and when he (i.e. A-3) refused to do this illegal act, one FIR and various departmental enquiries were initiated against him. Sanjiv Kumar claimed that despite such a pressure, he implemented the original award lists and declared the results, which antagonized Om Prakash Chautala and his political and bureaucratic colleagues. Accordingly, he prayed that CBI investigation in this scam.

3. Supreme Court of India vide its order dated 25.11.2003 directed the CBI to investigate the matter.

4. During investigation, Sanjiv Kumar handed over one set of interview list of District Kaithal and part list of District Kurukshetra to CBI. For sake of convenience, the 15 award lists filed by A-3 in Supreme Court and the one interview list of District Kaithal and part list of District Kurukshetra given by him to CBI during investigation would be referred to hereinafter as **Supreme Court Lists.**

5. During investigations, CBI collected the award lists of 18 districts from the office of Director Primary Education-Haryana. These lists would now be referred to as **Directorate Lists**. It is not in dispute that the result of JBT teachers was declared on the basis of these Directorate Lists.

6. Sanjiv Kumar claims that these Directorate Lists are genuine whereas Supreme Court lists are fake. Prosecution claims vice versa.

7. The investigations disclosed that till 1999 recruitment of JBT teachers was being conducted by Haryana Staff Selection Commission-Chandigarh. Om Prakash Chautala, the then Chief Minister of Haryana was also holding the portfolio of Education Minister-Haryana in September, 1999. A malafide decision was taken in the Cabinet of Ministers on 08.09.1999 vide which the JBT Teachers' recruitment was taken out from the purview of Haryana Staff Selection Commission and was entrusted to the Directorate of Primary Education-Haryana with ulterior motive to bring the recruitment under his control on the pretext of acute shortage of teachers. In compliance of this Cabinet decision, the Directorate of Primary Education advertised 3,206 district wise vacancies of JBT teachers in Indian Express and Dainik Tribune on 15.11.1999. These selections were to be made through District Level Selection Committees in 18 districts of Haryana. As per the charge sheet, the 18 District Level Selection Committees conducted

the interviews for these posts during December, 1999. The award lists were sent to Directorate, Primary Education. At that time, Sh. R.P. Chander-IAS was the Director of Primary Education.

8. It is alleged that Sh. R.P. Chander was transferred on 27.04.2000 and Ms. Rajni Shekri Sibal-IAS took over as Director Primary Education on that day. It is alleged that Ms. Rajni Shekri Sibal was called alongwith Prem Prashant-IAS & P.K. Mahapatra-IAS at Haryana Niwas-Chandigarh where Ajay Singh Chautala (A-5), Sher Singh Badshami (A-2) were also present. It is alleged that she was asked to change the award lists. Rajni Shekri Sibal alongwith Prem Prashant and P.K. Mahapatra were called to another meeting which was held at H.No. 78, Sector-7, Chandigarh which is the residence of Vidya Dhar (A-1). This meeting was also attended by Ajay Singh Chautala and Sher Singh Badshami apart from Vidya Dhar. Here also, Sher Singh Badshami asked Rajni Shekri Sibal to change the award lists so that their favoured candidates may be accommodated. It is alleged that Rajni Shekri Sibal, Prem Prashant and P.K. Mahapatra refused to agree to this proposal.

9. Prosecution has alleged that Om Prakash Chautala was Chief Minister of Haryana from 1999 to 2005. Ajay Singh Chautala (A-5) is the son of Om Prakash Chautala (A-4) and was Member of Parliament from Bhiwani

Constituency of Haryana at the relevant time. Vidya Dhar an HCS Officer (later promoted to IAS) was Officer on Special Duty (OSD) to the Chief Minister and Sher Singh Badshami was the political advisor to the Chief Minister during the relevant period of conspiracy. Prem Prashant-IAS was Financial Commissioner Education and Languages (FCEL) and P.K. Mahapatra-IAS was Director, Secondary Education, Haryana.

10. As per prosecution, Rajni Shekri Sibal received an anonymous phone call at her residence and she was offered 5% share of the collected money to agree to the aforesaid proposal. Subsequently, her house was also burgled. It is alleged that with a view to ensure the safety of the award lists received from 18 District Primary Education Officer, she wrapped the almirah containing the said award lists with four metres of cloth and sealed it using one rupee coin. Vide a note dt. 20.06.2000, she proposed to form a committee for compilation and preparation of the results of JBT teachers by Haryana State Electronics Development Corporation Ltd. (HARTRON), Chandigarh.

11. It is alleged that when Rajni Shekri Sibal refused to modify or replace the interview award lists, she was transferred and was replaced by Sanjiv Kumar-IAS (A-3) on 11.07.2000 with the approval of Om Prakash Chautala, the then Chief Minister-Haryana. At that time, Sanjiv Kumar was already

holding the substantive charge of Special Project Director, Haryana Prathmik Shiksha Pariyojna Parishad (HPSPP) and he was given additional charge of Directorate of Primary Education with an understanding that he would prepare a second set of award lists and replace it with the original award lists.

12. It is alleged that Sanjiv Kumar took out the original award lists from the said almirah in the middle of August, 2000 and asked his P.A. namely Mohan Lal Gupta and Office Superintendent Sardar Singh to check as to how many scheduled caste and backward class candidates are exceeding their vacancies and are being selected in the General category. For this purpose, Prerna Guest House-Panchkula was arranged by Sanjiv Kumar. It is alleged that Mohan Lal-P.A., Sardar Singh-Superintendent and Balram Yadav-Assistant in Directorate Primary Education made use of Prerna Guest House for two or three days and checked the original award lists, but, could not reach to any conclusion and accordingly those lists were returned to Sanjiv Kumar. Prosecution claims that this shows that actually the original award lists had been taken out of the almirah prior to 16.09.2000, when a drama of de-sealing the said almirah and taking out the award lists in presence of six members of result compilation committee was enacted. As per investigation, the new set of award lists had already been placed in the

almirah before 16.09.2000 and these new lists were sent to HARTRON which compiled the result of JBT teachers candidates. The result was ready on 03.10.2000 and thereafter it was published in the newspapers and the appointments were given to the selected candidates on the basis of new and fake award lists soon thereafter.

13. As per prosecution, at the behest of Om Prakash Chautala-the then Chief Minister and with the active support of Vidya Dhar-OSD to CM and Sher Singh Badshami-Political Advisor to CM, some Chairpersons and the members of District Level Selection Committees were called by Sanjiv Kumar at the rest House of Water Supply & Sanitation Department of Punjab located at 1257, Sector-18B, Chandigarh in last week of August-2000, some were called in Haryana Bhawan, New Delhi on 01.09.2000 and some were called in the office of Director Primary Education-Chandigarh. These Chairpersons and members(who have been impleaded as A-6 to A-62) were instructed to prepare the second set of award lists of their respective districts. On their request, even photocopies of original award lists were given to them for this purpose. Prosecution alleges that after collecting the second set of award lists, Sanjiv Kumar placed the fake award lists in the almirah in his office. Thereafter, on 16.09.2000, he conducted bogus proceedings of de-sealing the almirah and

taking out the award lists from it and sent the same to HARTRON for compilation of results.

14. During investigation, CBI has seized from the Directorate, Primary Education-Chandigarh, the set of award lists upon which the result was finally declared. For sake of convenience, all these award lists of 18 districts have been referred to as **Directorate Lists**.

15. Prosecution claims that these Directorate Lists are infact the fake lists upon which the result was declared and the candidates were given appointments as JBT teachers in State of Haryana. Prosecution also claims that the **Supreme Court Lists** presented by Sanjiv Kumar in Supreme Court of India are infact the original and genuine award lists prepared by the District Level Selection Committees in December, 1999. I may repeat that Sanjiv Kumar has stressed in the Supreme Court of India as well as throughout the trial a reverse case i.e. Supreme Court Lists being the fake lists and Directorate Lists being the genuine lists.

CHARGES, PROSECUTION & DEFENCE

16. Prosecution filed the charge sheet, cognizance was taken and accused persons were summoned to face the trial. It is necessary to state here that accused **Prabhu Dayal (A14), Shashi Bhushan (A34) and Smt. Kamla**

Devi (A58) had expired before filing of the charge sheet. **Accused Udal Prasad Sharma (A-18), Puran Chand (A-42) & Nathu Ram (A-53)** expired during the pendency of the trial.

17. Arguments on charge in respect of rest of the accused persons were heard. Vide my order dated 23.7.2011, **accused Brij Mohan (A19) was discharged.** However a charge under Section 13(2) read with Section 13(1) d of P. C. Act 1988 was framed against accused O. P. Chautala (A-4).

A separate charge was framed against accused Sanjiv Kumar (A-3) under Section 13(2) read with Section 13(1) d of P. C. Act 1988 as well as under Section 420 IPC.

A charge against all the accused persons (except A-14, A-19, A-34 & A-58) was framed under Section 120B IPC read with Section 420/467/468/471 IPC and also read with Section 13(2) read with Section 13(1) d of P. C. Act.

A separate charge was framed against A-6 to A-62 (except those who had died or discharged) under Section 13(2) read with Section 13(1) d of P. C. Act 1988, under Section 420/468/467/471 IPC.

18. All the accused persons pleaded not guilty and claimed trial. In order to prove its case, prosecution examined in all 68 witnesses. Statements u/s 313 CrPC were recorded and many accused persons gave their written

statements also u/s 313(5) CrPC. Vidya Dhar (A-1) examined **one** witness in defence, Sher Singh Badshami (A-2) examined **one** witness in his defence, Sanjiv Kumar (A-3) examined **11** witnesses in his defence **including himself**, O.P. Chautala (A-4) examined **one** witness in his defence, Ajay Singh Chautala (A-5) examined **one** witness in his defence.

Brahamanand (A-9) examined **one** defence witness, Sher Singh (A-23) examined **himself** as defence witness. Sheesh Pal Singh (A-43) examined **one** defence witness and Smt. Sudha Sachdeva (A-49) also examined **one** defence witness. Darshan Dayal Verma (A-50) stepped **himself** in witness box to testify his version.

Rajender Singh Dahiya (A-56) examined **three** defence witnesses.

Sarwan Kumar Chawla (A-60), Urmil Sharma (A-61) and Joginder Lal (A-62) themselves entered the witness box and testified before this court about the circumstances in which they had to sign on the fake award lists.

No other accused led any defence evidence despite having been given the opportunity to do so.

RESPECTIVE STANDS OF THE ACCUSED PERSONS

19. Before discussing the evidence and submissions of the accused persons, it would be appropriate to mention here in brief the respective stands of the parties. Om Prakash Chautala (A-4), Ajay Singh Chautala

(A-5) and Sher Singh Badshami (A-2) have denied not only their participation in the crime, but also, having any knowledge of the same at the relevant time. They are the prominent members of Indian National Lok Dal and have claimed that Sanjiv Kumar-IAS and Rajni Shekri Sibal are playing in the hands of their political opponents namely Bhupinder Singh Hooda, the present Chief Minister of Haryana and earlier the main opposition leader belonging to Indian National Congress Party, in connivance with another politicians like Karan Dalal and Kapil Sibal.

Sanjiv Kumar (A-3) claims that his stand in Supreme Court as well as before this court is a correct stand and the Supreme Court Lists are false lists, whereas Directorate Lists are genuine lists.

Daya Saini (A-40), the Chairperson of Panipat District Level Selection Committee and its members namely **Ram Singh (A-41)** and **Puran Chand (A-42 since expired)** had taken the stand in their statements u/s 313 CrPC as well as during the entire trial that they had prepared only one list which is the Directorate List and therefore **Directorate List of District Panipat (D-18 Ext.PW15/C)** is a genuine award list.

Madan Lal Kalra (A-27), the Chairman of District Level Selection Committee-Kurukshetra also stated that he had prepared only one list i.e. the **Directorate List (D-16(I), Ext.PW15/D)** and the same is a genuine

list.

Pushkar Mal Verma (A-37)-the Chairman of District Level Selection Committee-Mahendergarh(Narnaul) and its members **Durga Dutt Pradhan (A-38)** and **Bani Singh (A-39)** denied having signed the Supreme Court List and the Directorate List of District Mahendergarh presented in the court. **Bani Singh (A-39)** infact denied being a member of the District Level Selection Committee and having conducted any interviews.

Raksha Jindal (A-45) took the defence that she was never appointed as member of the District Level Selection Committee-Panchkula. However, she was misled by Rekha Sharma (A-44)-another member of the committee and she signed the two award lists only as the token of having calculated the marks given in the said award lists.

To sum up, whereas A-3, A-27, A-40, A-41 and A-42 have taken the stand that the Directorate Lists are the genuine lists, most of the Chairpersons and the members of the District Level Selection Committees support the prosecution version and assert that the Supreme Court Lists are the genuine lists and Directorate Lists are the fake lists and that these fake lists were prepared by them, not voluntarily, but, under immense pressure from Sanjiv Kumar, Sher Singh Badshami and Vidya Dhar. These accused persons have consistently claimed during the whole trial that they were not

only apprehensive of harm to their service but also to their physical safety and their family's lives.

EFFECT OF RETIREMENT BEFORE AUGUST/SEPTEMBER-2000.

20. Some of the accused persons have raised the plea that they had retired before August-2000 and since the fake lists were prepared in the month of August-September 2000, they cannot be convicted under the substantial charges of Prevention of Corruption Act. The names of these accused persons and their dates of retirements are as under:

	Names	Date of Retirement
1.	Sher Singh (A-23)	31.01.2000
2.	Dilbagh Singh (A-35)	30.04.2000
3.	Ram Singh (A-41)	31.01.2000
4.	Joginder Lal (A-62)	31.03.2000

Ld. Special Public Prosecutor does not dispute the date of retirement and the fact that the fake lists were prepared in the month of August-September 2000. However, he argues that although the aforesaid accused persons had retired before the preparation of the fake lists, but, these accused persons had purportedly signed as a public servant on the fake lists.

Hence, they are public servants within the meaning of Prevention of Corruption Act. I disagree with the submissions of the Special Public Prosecutor. The substantial provisions of Prevention of Corruption Act would be applicable when an act is done by a person during the time when he was a public servant. Here, when the aforesaid accused persons signed the second set of lists, they had retired and were no more acting in capacity of public servant. Therefore, A-23, A-35, A-41 & A-62 stands acquitted u/s 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. However, these accused persons will have to answer the charge of conspiracy u/s 120-B IPC read with Section 13(1)(d) of Prevention of Corruption Act because the charge against them is that they conspired with other public servants including Sanjiv Kumar (A-3), apart from the other charges.

A FEW UNDISPUTED FACTS.

21. It would be apt to mention a few facts which are not in dispute. As per para 13 of the charge sheet, the names and particulars of Chairpersons and members of the District Level Selection Committees are as under:

Sr. No.	Name	Designation	Chairpersons/ members	Accused
I. AMBALA				
1	Smt. Prem Bahl	District Primary	Chair Person	A-6

		Education Officer, Ambala		
2	Smt. Shashi Malhotra	Principal, Govt. Sr. Sec. School, Ambala	Member	A-7
3	Smt. Krishna	Ex – Block Education Officer, Ambala-II,	Member	A-8
II. BHIWANI				
4	Brahma Nand	District Primary Education Officer, Bhiwani	Chairman	A-9
5	Ms. Vinod Kumari	Principal, Govt. Sr. Sec. School, Bhiwani	Member	A-10
6	Sawan Lal	Block Education Officer,	Member	A-12
7	Maman	Block Education Officer, Bhiwani-II	Member	A-11
III. FARIDABAD				
8	Ram Saran Kukreja	District Primary Education Officer, Faridabad	Chairman Sh. R.S. Kukreja was DPEO till 02.12.1999 after which Sh. Harbans Lal took over the charge.	A-17
9	Harbans Lal	DPEO, (02.12.1999 till 31.01.2002)	Chairman	A-16
10	Udal Prasad	Dy. District Education	Member	A-18

	Sharma	Officer, Faridabad		
11	Brij Mohan	Block Education Officers, Palwal-II	Member	A-19
IV. FATEHABAD				
12	Smt. Kanta Sharma	District Education Primary Officer, Fatehabad	Chairperson	A-13
13	Prabhu Dayal	Principal, Khabra Kala	Member	A-14 (since expired)
14	Smt. Phool Khurana	Block Education Officer, Bhuna	Member	A-15
V. GURGAON				
15	Chand Singh Verma	District Education Primary Officer, Gurgaon	Chairman	A-20
16	Smt. Abhilash Kaur	Block Education Officer, Gurgaon	Member	A-22
17	Yogesh Kumar Sharma	The then Dy. District Education Officer, Gurgaon	Member	A-21
VI. JHAJJAR				
18	Sher Singh	District Education Primary Officer, Jhajjar	Chairman	A-23
19	Anar Singh	Dy. Distt. Education	Member	A-24

		Officer, Jhajjar		
20	Smt. Kailash Kaushik	Sr. Block Education Officer, Jhajjar	Member	A-25
VII. JIND				
21	Ajit Singh Sangwan	District Primary Education Officer, Jind	Chairman	A-26
22	Ram Kaur	Dy. District Education Officer, Jind	Member	A-27
23	Mahavir Singh	Block Education Officer, Jind	Member	A-28
VIII. KARNAL				
24	Narain Singh Ruhil	District Primary Education Officer, Karnal	Chairman	A-29
25	Krishan Lal Narang	Dy. District Education Officer, Karnal	Member	A-30
26	Smt. Usha Rani	Block Education Officer, Karnal	Member	A-31
IX. KURUKSHETRA				
27	Madan Lal Kalra	District Primary Education Officer, Kurukshetra	Chairman	A-32
28	Veerbhan Mehta	Dy. Distt. Education Officer, Kurukshetra	Member	A-33
29	Shashi Bhushan	Block Education Officer, Kurukshetra	Member	A-34

X. KAITHAL				
30	Dilbag Singh	District Primary Education Officer, Distt. Kaithal	Chairman	A-35
31	Ram Kumar	Block Education Officer, Kalayat, Distt. Kaithal	Member	A-36
32	Megh Nath Sharma	Dy. Distt. Education Officer, Kaithal	Member (But did not sign.)	Not accused
XI. MAHENDERGARH				
33	Pushkar Mal Verma	District Primary Education Officer, Mahendergarh	Chairman	A-37
34	Durga Pradhan Dutt	Principal, Govt. Girls, Sr. Sec. School	Member	A-38
35	Bani Singh	Block Education Officer, Mahendergarh	Member	A-39
XII. PANCHKULA				
36	Sheesh Pal Singh	District Primary Education Officer, Panchkula	Chairman	A-43
37	Smt. Rekha Sharma	Block Education Officer, Ramgarh, Panchkula	Member	A-44
38	Smt. Raksha Jindal	Ex-Principal Govt. Sr. Sec. School, Panchkula	Member	A-45
XIII. PANIPAT				

39	Smt. Daya Saini	Assistant Director, Primary Education, Haryana, Chandigarh	Chairperson	A-40
40	Ram Singh	Dy. Distt. Education Officer, Panipat	Member	A-41
41	Puran Chand(expired during trial)	Block Education Officer, Panipat	Member	A-42
XIV. ROHTAK				
42	Jeet Ram Khokhar	District Primary Education Officer, Rohtak	Chairman	A-46
43	Amar Singh	Block Education Officer, Narnaul	Member	A-48
44	Nirmal Devi	Dy. Distt. Education Officer, Rohtak	Member	A-47
XV. REWARI				
45	Smt. Sudha Sachdeva	District Primary Education Officer, Rewari	Chairman	A-49
46	Darshan Dayal Verma	District Primary Education Officer, Rewari	Chairman	A-50
47	Smt. Saroj Sharma	Dry. Distt. Education Officer, Rewari	Member	A-51
48	Tulsi Ram Bihagra	Block Education Officer, Bawal-II Distt. Rewari	Member	A-52

XVI. SIRSA				
49	Nathu Ram	District Primary Education Officer, Sirsa	Chairman (expired during trial)	A-53
50	Ram Saran Kukreja same as at Sr. No. 8	The then District Primary Edu. Officer, Faridabad, (Only till 02.12.1999) and DPEO, Sirsa thereafter	Chairman	A-17
51	Om Prakash Tiwari	Distt. Education Officer, Sirsa	Member	A-54
52	Bihari Lal	Block Education Officer, Kalanwali, Sirsa	Member	A-55
XVII. SONEPAT				
53	Rajinder Singh Dahiya	District Primary Education Officer, Sonapat	Chairman	A-56
54	Dalip Singh	Dy. Distt. Education Officer, Sonapat	Member	A-57
55	Smt. Kamla Devi	Block Education Officer, Sonapat-II	Member	A-58
XVIII. YAMUNA NAGAR				
56	Rajinder Singh Pal	District Primary Education Officer, Yamuna Nagar	Chairman	A-59
57	Sarwan Kumar Chawla	Dy. Distt. Education Officer, Yamuna Nagar	Member	A-60

58	Joginder Lal	Block Education Officer, Yamuna Nagar	Member	A-62
59	Smt. Urmil Sharma	Block Education Officer, Yamuna Nagar	Member	A-61

22. Except Bani Singh (A-39) and Raksha Jindal (A-45), all the abovementioned accused persons have admitted the aforesaid particulars to be correct during trial and in their statements u/s 313 CrPC.

23. It is not in dispute that Om Prakash Chautala (A-4) was the Chief Minister of Haryana from 1999 to 2005. Vidya Dhar (A-1) was his OSD and Sher Singh Badshami (A-2) was his political advisor during that time. Vidya Dhar was an officer of Haryana Civil Services and later on promoted as IAS Officer and therefore a public servant. Sher Singh Badshami was not a public servant, though, holding a post of Political Advisor to Chief Minister during the relevant time. Ajay Singh Chautala (A-5) is son of Om Prakash Chautala (A-4) and was Member of Parliament from Bhiwani constituency during the said period.

24. It is not in dispute that more than 8000 candidates applied and result was prepared by HARTRON based on the Directorate Lists and appointments were given to 3,206 candidates pursuant to the said result.

25. The contents of the Writ Petition No. 93/2000 **Ext.PW63/B-1** filed by Sanjiv Kumar and his reply (**Ext.PW63/B3**) to the counter affidavit of

the respondent therein and the order of Supreme Court (**Ext.PW63/PX, D-113**) are also not in dispute.

WHICH SET OF LISTS IS GENUINE AND WHICH ONE IS FAKE?

26. This court is faced with two versions in this regard. Accused Sanjiv Kumar (A-3) had submitted before Supreme Court of India a set of 15 award lists and thereafter one list of District Kaithal and a part list of District Kurukshetra was handed over to the investigating officer during investigation. All these lists for sake of convenience are being referred to as 'Supreme Court Lists'. The stand of Sanjiv Kumar (A-3) from the very beginning is that Supreme Court Lists are the fake lists, which were given to him for implementation. However, since he refused to do so, he was implicated in various cases/inquiries by the Government of Haryana. He also claims that he declared the result on the basis of Directorate Lists, which as per him were genuine lists, and, therefore invited the wrath of the Government headed by Om Prakash Chautala. In support of his contention on the point of genuineness or fakeness of the lists, he had taken me through each list and has submitted as under:

Regarding Panipat List

27. Sanjiv Kumar had not filed any list of Panipat in Supreme Court or to CBI. Therefore, only one award list of Panipat (**D-18 Ext.PW15/C**) which

was collected from the Directorate Primary Education by Investigating Officer is available before this court. Sanjiv Kumar has drawn support from the stand of the Chairpersons and the members of District Level Selection Committee namely Daya Saini (A-40), Ram Singh (A-41) and Puran Chand (A-42) who have stated in their statements u/s 313 CrPC that Directorate List of Panipat is a genuine list.

Regarding Kurukshetra List [D-16(1)]

28. In this regard, it is pertinent to note that Madan Lal Kalra (A-32) was the Chairman of the District Level Selection Committee-Kurukshetra and Veer Bhan Mehta (A-33) & Shashi Bhushan (A-34) were its members. Shashi Bhushan (A-34) had expired before filing of charge sheet. Sanjiv Kumar has drawn my attention to Question no. 311 put to Madan Lal Kalra (A-32) u/s 313 CrPC. A-32 has answered that the List **Ext.PW15/D** is the genuine list which is signed by him. Sanjiv Kumar submits that the list **Ext.PW15/D** is Directorate List and this again proves that Directorate Lists are the genuine lists.

Regarding Panchkula Lists

29. The Supreme Court List of this District is D-21 which is exhibited as **Ext.PW18/A**. The Directorate List of this district is D-3 and has been exhibited as **Ext.PW18/B**. The peculiarity of these two lists is that these

lists are computerized lists. I would like to reproduce para 50 of the charge sheet as under:

*“The report of APFSL Hyderabad shows that the list submitted by Sanjiv Kumar, (A3) before the **Supreme Court** and the **list of District Panchkula, seized from Directorate of Primary Education**, of District Panchkula had been generated on computers. The **Supreme Court list** was prepared on computer on 17.12.1999 by hiring the services of one Hitesh Bansal, at his residence. Whereas the **Directorate list** was got prepared from another private firm M/s V.C.C. Computer Education, SCO – 60, Sec.-12A, Panchkula, whose proprietor was one Shri Naresh Kumar. The forensic opinion on the hard disk of private firm M/s V.C.C. Computer Education seized during investigation states that there is no data available with respect to the two award lists i.e. the Supreme Court list and the Directorate list. Shri Naresh Kumar, proprietor M/s V.C.C. Computer Education **had prepared the Directorate list** of District Panchkula in the month of September-2000 when approached by Miss Rekha Sharma, (A-44) Block Education Officer, Ramgarh, Panchkula, who was a member of the Selection Committee of Panchkula.”*

30. Prosecution examined Hitesh Bansal as PW-20. He testified that in

2004 R.N. Azad-Additional S.P.-CBI inquired from him about the computer job which he had done for Rekha Sharma during December-1999. R.N. Azad had taken the relevant data from his computer in a floppy and the floppy & the hard disc of the computer were seized by him. From the floppy, a print of the said work i.e. award list of JBT candidates was taken. It showed that this list was got prepared on 17.12.1999. This print out (D-42) is **Ext.PW20/C** and tallies with the Supreme Court List.

31. Sanjiv Kumar argues that the fake evidence has been created by CBI and he has drawn my attention to the testimony of the expert witness U.Ramamohan (PW-65) wherein he testifies that the computer was updated in MS-Word-2000. It is argued that the fact that the computer of Hitesh Bansal was having 2000 version of Microsoft Office, it is clear that the list contained in the print out Ext.PW20/C could not have been prepared in the year 1999. Rather this fact proves the contention of A-3 that this list was prepared in the year 2000. It is argued that in the year 2000 the fake list was prepared whereas genuine list was prepared in the year 1999. As per submissions of Sanjiv Kumar, the print out Ext.PW20/C is therefore of the year 2000 and the same tallies with the Supreme Court List and thus the Supreme Court List is a fake list, whereas the Directorate List of Panchkula District is the genuine list.

Regarding Rewari Lists

32. Smt. Sudha Sachdeva (A49) was the Chairpersons of the District Level Selection Committee- Rewari and Darshan Dayal Verma (A50), Smt. Saroj Sharma (A51) and Tulsi Ram Bihagra (A52) were its members. The Supreme Court list D-32 is proved as **Ex.PW39/A**, whereas the Directorate list of Rewari D-14 is proved as **Ex.PW15/B**. The Supreme Court list bears the signatures of Sudha Sachdeva (A49) as well as all the other members. However the peculiarity of the Directorate list is that the signatures of the chair person namely Sudha Sachdeva (A49) are not present, however this list is duly signed by other members. It is argued by Sanjiv Kumar (A3) that if Directorate list is a fake list, it must have contained the signatures of chair person i.e. A49 because in the regime of Om Prakash Chautala no one had courage to say “no” even to an illegal direction issued by the Government. It is submitted by Sanjiv Kumar (A3) that most of accused persons amongst A6 to A62 have explained and narrated to this court in no uncertain terms about the fearful environment obtaining in the State of Haryana under the repressive Government of Indian National Lok Dal headed by Om Prakash Chautala. In such a situation, a list which bears the signatures of all the members should be the fake list, whereas the list in which chair person did not sign should be a genuine list. Sanjiv Kumar (A3) argues that a member

or chairman may not sign in case he is not available on the date of interview for any reason. Sanjiv Kumar has drawn my attention to the affidavit (D-58) of Sudha Sachdeva which has been proved as Ext.PW46/10 in which she swears on oath that she had signed the second list. It is argued that this also fortifies his arguments that Sudha Sachdeva had signed the second list, therefore, it means that the list which bears the signatures of Sudha Sachdeva should be fake list. In this case, it is argued that only Supreme Court List (and not the Directorate List) bears her signatures. Hence, it is submitted that Supreme Court list of District Rewari is a fake list.

33. Sanjiv Kumar (A3) has drawn my attention to the fact that Darshan Dayal Verma (A-50) was initially the chair person of Rewari Selection Committee for first three days of the interviews. Thereafter he was transferred and Sudha Sachdeva was posted in his place as the chair person of Rewari Selection Committee. Sanjiv Kumar (A3) has drawn my attention to the Supreme Court list, where Darshan Dayal Verma (A50) has signed as "Ex DPEO" on first 12 pages of the award lists. Thereafter, the Sudha Sachdeva signed as the chair person. It is argued that on the original list, Darshan Dayal Verma (A50) would have signed for first three days as DPEO and not as Ex DPEO. Sanjiv Kumar (A3) has drawn my attention to the Directorate list of Rewari (D-14) and which is exhibited as **Ex.PW15/B** and

submits that it bears the signatures of D. D. Verma with the designation DPEO. Therefore it is argued that his designation on the Directorate list **Ex.PW15/B** shows that he signed this list when he was District Primary Education Officer, Rewari. It is argued that Supreme Court list bears his signatures with designation as Ex DPEO, which shows that he signed this list when he had already relinquished the charge as DPEO. Therefore Supreme Court list must be termed as the fake list and the Directorate list should be treated as the genuine list.

Regarding Yamuna Nagar lists

34. Rajender Pal Singh (A59) was the chairman of the Selection Committee. Sarwan Kumar Chawla (A60), Smt. Urmil Sharma (A61) and Joginder Lal (A62) were the members this committee. It is pertinent to note that A60, A61 and A62 stepped into the witness box to give their own versions. Sanjiv Kumar (A3) has drawn my attention to the testimony of Smt. Urmil Sharma, who examined herself in defence as A61/DW1 as well as to the evidence of Joginder Lal, who examined himself as defence witness as A62/DW1. Sanjiv Kumar (A3) submits that both these accused persons have testified that Smt. Urmil Sharma had only conducted interviews for first three days and thereafter she proceeded on leave. Thereafter Joginder Lal took his place and conducted the interviews. Joginder Lal A62/DW1 has

testified that his signatures were taken forcibly even on first three dates of interviews on which he had he was not a part of the interviewing committee. Joginder Lal also testified that **since on page 1 to 17 on the Supreme Court list Ex.PW27/A (D-29), his signatures as well as the signatures of Smt. Urmil Sharma are present, therefore Supreme Court list is the fake list.** It is because in no case his signatures and signatures of Smt. Urmil Sharma would be found together, since he became part of interviewing committee after Smt. Urmil Sharma has proceeded on leave. He also testified that the Directorate list of Yamuna Nagar **Ex.PW15/J (D-11)** is the real list.

35. Sanjiv Kumar (A3) has argued that Sarwan Kumar Chawla (A60) and Smt. Urmil Sharma have been unable to identify as to which one is the real list but Joginder Lal (A62) has given his reasons as to why he is identifying the Directorate list to be genuine list and Supreme Court list as the fake list. Sanjiv Kumar (A3) argues that although Joginder Lal (A62) later on take a U-turn in cross examination by Sh. Ashok Kumar, adv. but it must not be forgotten that Sh. Ashok Kumar, adv. on behalf of Rajinder Pal Singh (A59) cross examined him after a few days. This time gap was used by accused Rajinder Pal Singh (A59) and Sher Singh Badshami (A2), who belonged to the same district to pressurize this witness, who had already suffered much

agony as reflected in his testimony. Hence it is argued that Directorate list of District Yamuna Nagar is the real list and the Supreme Court list is the fake list.

Regarding Rohtak lists

36. Sanjiv Kumar (A3) has drawn my attention to the columns of interview marks and grand total in the Supreme Court list (D-30) of District Rohtak, which is **Ex.PW43/D**. It is submitted that both the columns are blank and do not contain any marks. Had it been in original list, these columns must have been filled up. It is argued that at the instance of Om Prakash Chautala, the bureaucratic and political henchmen executed the entire work of creating fake lists in most crude manner and got the signatures of chair person and members of Rohtak Selection Committee with a view to fill the marks later on as per their convenience. In this haste they forgot to fill up the marks. It is argued that this is the reason that this list does not contain the interview marks and the grand total. On the other hand, D-12 is the Directorate List of District Rohtak, which is exhibited as **Ex.PW15/K**. It is argued that in this list interview marks and grand total are duly filled up which shows that this is the genuine list.

Regarding Sonapat lists

37. The Supreme Court List of District Sonapat (D-26) is **Ext.PW43/C**.

The Directorate List of this district (D-8) is **Ext.PW15/G. Rajender Singh Dahiya (A-56)** was the Chairman of this District Level Selection Committee and **Dalip Singh (A-57)** was its member. Another member namely **Kamla Devi (A-58)** had expired before filing the charge sheet. A-56 & A-57 in their statements u/s 313 CrPC admit their signatures on both the lists. Sanjiv Kumar has drawn my attention to the Directorate List which is properly typed in respect of all the columns except interview marks and the grand total. However, it is argued by him that the typing of particulars of the candidates in Supreme Court List would show that this is a carbon copy of the typed document. It is argued that why would the selectors use a carbon copy of the sheets containing particulars of the candidates for putting the interview marks on it. It is argued that had it been a genuine list, the interview marks should have been given on the original typed copy and not on its carbon copy. It is argued by Sanjiv Kumar that the second list was prepared in a great hurry and when they found the carbon copy of the particulars of the candidates, the fake list was prepared by putting the interview marks and grand total on the same. It was done with a view to effect the scheme of creating new set of lists expeditiously. It is, therefore, argued that Supreme Court List of District Sonapat is a fake list and the Directorate List of this district is a genuine list.

Regarding Faridabad Lists

38. The Directorate List (D-4) is **Ext.PW15/L**. It has also been given another exhibit number **Ext.PW17/B** inadvertently during the examination of PW-17 Brij Mohan who proved these lists. The Supreme Court List (D-22) of this district is **Ext.PW17/A**. It is pertinent to note that initially Ram Saran Kukreja (A-17) was the Chairman of this committee and conducted interviews only till 02.12.1999 when he was transferred to Sirsa. He was replaced by Harbans Lal who conducted interviews from 02.12.1999 onwards. Sanjiv Kumar has drawn my attention to the Supreme Court List **Ext.PW17/A** and submits that the signatures of R.S. Kukreja (A-17) are not available on it, though, he had conducted interviews for first two days. He has drawn my attention to the Directorate List **Ext.PW17/B** and has also drawn my attention to the testimony of PW-17 Brij Mohan who identifies the signatures of R.S. Kukreja on first twelve sheets at serial no. 1. It is argued that the genuine list must bear the signatures of R.S. Kukreja on first two days of the interviews. Since his signatures are available on the Directorate List on first twelve pages, it stands proved that the Directorate List of Faridabad is the genuine list. Sanjiv Kumar argues that Brij Mohan (PW-17) has testified that Supreme Court List was genuine list and Directorate List was the fake list because when he was pressurized to sign

the fake list, he wrote 'UP' under his signatures. This witness, who was a member of Faridabad Selection Committee stated that by writing 'U.P.' under his signatures, he meant that he had signed 'Under Pressure'. Arguments of the prosecution is that since the letters 'U.P.' are appearing in the Directorate List, therefore, the Directorate List is a fake list. This argument has been met by Sanjiv Kumar on the ground that nowhere in the Directorate List the words 'U.P.' are visible under or alongwith his signatures. Hence, it is argued by A-3 that Directorate List of district Faridabad is the genuine list and Supreme Court List is the fake one.

39. In this regard, Sanjiv Kumar has also drawn my attention to the file D-61 which was recovered by CBI from the office of DPEO-Faridabad. It is submitted that this list is in two parts. As per prosecution, this file contains a photocopy of Supreme Court List (D-22) of Faridabad, of which the columns of interview marks and grand total appear to have been concealed by putting some paper while taking its photocopy. My attention has been drawn to the testimony of investigating officer PW-63, wherein he has testified that this was the manner (i.e. getting the photocopy of the award list by putting a paper on the interview marks and the grand total) in which the photocopy of the original/genuine lists were given to the Chairpersons and the members of the District Level Selection Committees for preparation

of the fake list. Sanjiv Kumar controverts this contention by drawing my attention to the fact that in fact this is a carbon copy of Directorate List (D-4).

40. I have seen D-61. It has two lists. One list is a complete list having interview marks and grand total and having signatures of Harbans Lal, Udal Prasad and Brij Mohan. There is another list which is a photocopy in which total interview marks and grand total appears to have been concealed by putting some paper on it. The investigating officer has testified (in cross examination dt. 15.02.2012) that this file D-61 (**Ext.PW63/DB**) was seized during investigation and it contains one copy of the false award lists and one photocopy of the genuine award list (i.e. the Supreme Court list) prepared from 01.12.1999 to 10.12.1999 and photocopy has been obtained by placing a paper on the columns of total marks , interview marks and grand total marks. As per prosecution, this file was seized on 26.05.2004 from the office of District Primary Education Officer-Faridabad. Sanjiv Kumar argues that if this photocopy, its typing and its lines are compared with the lists, it would be clear that it is a photocopy of the Directorate List of Faridabad. This also proves that the photocopies of Directorate List of Faridabad was given to the Chairperson/members of the District Level Selection Committees for preparation of the new list. Hence, it is argued

that this also fortifies the case on A-3 that Directorate List is the original list and Supreme Court list is the fake list.

Regarding Kaithal Lists

41. Dilbagh Singh (A-35) was the Chairman of this District Level Selection Committee and Ram Kumar (A-36) was its member. Another member namely Megh Nath Sharma did not sign any of the lists. It is admitted fact that although he conducted the interviews alongwith Chairman and another member, but, he was in disagreement with his Chairman on the manner of giving marks. Meghnath Sharma insisted that the interview marks should be given as per the instructions issued to them. These instructions were issued to all the District Primary Education Officers (DPEOs) in a meeting called on 24.11.1999 by Director Primary Education and the same has been exhibited as **Ext.PW24/DJ (D-40 Vol.I, instruction no. 10 at page 155)**. This instruction no. 10 mentions that it should be ensured that the merit list of educational qualification should be prepared as per the selection formula before 01.12.1999 and three lists should be prepared for the three members of the selection committee and before start of the interviews all the members should be given one copy of the list each. Another copy of these instructions is exhibited as **Ext.PW52/C**. Sanjiv Kumar has drawn my attention to the reply sent by Meghnath Sharma in

response to the show cause notice for refusing to sign the list. It is argued that in this reply Meghnath Sharma has stated that he had given marks in interview in code words 'A,B,C,D' and 'A'=6.5; 'B' = 5.0, 'C'=4.0, 'D'=3.0 & 'E'=2.5 marks. It is argued by Sanjiv Kumar that this pattern tallies with the pattern of interview marks of the Directorate Lists where large number of persons had been given 3,4,5,6 interview marks. Thus, it is argued that the reply of Meghnath Sharma not only proves that the Directorate List **Ext.PW21/B (D-17)** of District Kaithal is genuine list, but, also proves that all the Directorate Lists which contained this pattern of interview marks are the genuine lists. Consequently, the Supreme Court lists must be treated as the fake lists.

Regarding Jind Lists

42. Ajit Singh Sangwan (A-26) was the Chairman of District Level Selection committee. Smt. Ram Kaur (A-27) and Mahavir Singh (A-28) were its members. The Supreme Court List (D-23) has been proved as **Ext.PW2/1**. The Directorate List (D-5) of this district is **Ext.PW2/2**.

43. Prosecution has examined PW-5 Milap Singh, the clerk in the office of DPEO-Jind, PW-14 Dhup Singh- the Dy. Superintendent in the office of DPEO-Jind and Ravi Dutt PW-2 a clerk in the office of DPEO-Jind. They have testified that in December-1999, an interview list was prepared which

bears the signatures of Dhup Singh on all the sheets. Dhup Singh also testifies that he had signed this list in token of checking the academic qualification marks. However, he testified that after two or three days from 01.09.2000 the lists were again typed, but he refused to put his signatures unless original was shown to him. As per prosecution case, testimony of the aforesaid witnesses proves that the list bearing the signatures of Dhup Singh are genuine and the list which does not bear his signatures is a fake list.

44. Sanjiv Kumar (A-3) refutes this argument. It is argued that the award lists must bear the signatures of the members of District Level Selection Committees only. It is argued that it cannot have the signatures of any other person and if signature of any other person is available, it means that it is a fake list. A-3 reminds this court that it must not be forgotten that the fake lists were prepared with a great speed, forcibly without having regards to any norms resulting in such type of absurdities and illegalities which are appearing almost on all the fake lists. It is argued by A-3 that PW-14 Dhup Singh was not the member of the District Level Selection Committee and therefore his signatures should not be available on the genuine list. Since, his signatures are available on Supreme Court list, it means that it is a fake list. On the other hand, his signatures are not available on Directorate List, which proves that it is genuine list.

45. A-3 further fortifies his arguments by referring to the testimony of A-3/DW-11 namely Subhash Chander. This witness was examined by A-3 in his defence. This defence witness testified that in the first week of September, 2000, he was posted at Govt. High School, Pandu Pindara, District Jind, Haryana as social studies master, when Ajit singh Sangwan (A-26) DPEO-Jind called him to his office. Some papers were spread on the table in his office. Ajit Singh Sangwan told him that at the instance of the government, fresh lists relating to JBT appointments were prepared. A-26 put some lists in his presence in an envelope and put gum to close it and also put some seal on it. Thereafter, on the instructions of A-26, he wrote 'Director Primary Education Haryana' on the envelope and on the corner of this envelope, he (i.e. this witness) also wrote 'District Primary Education Officer-Jind.' Thereafter, at directions of A-26 he delivered this envelope to Vidya Dhar- OSD to CM at his residence at Sector-7, Chandigarh. A-3 argues that although he had opened all the fake lists thrust upon him for implementation before presenting the same in the Supreme Court, but, he had deliberately kept the envelope received from Jind, duly sealed and it was opened in presence of Pushpa Ramdeo, Dy. Registrar (PW-43) in Supreme Court. A-3 submits that she testified that at serial no. 15 of the memo, it is written that "one envelope containing award list of JBT

teachers-Jind these list were in sealed cover”. It is argued by A-3 that this proves that sealed envelope containing the fake Jind list opened in Supreme Court of India, is the same list which Subhash Chander delivered to Vidya Dhar. Subhash Chander has also identified his writing on the Jind envelope Ext.PW43/DA-1. A-3 has drawn my attention that this envelope contained Supreme Court List of Jind and therefore the entire chain of direct evidence proves beyond doubt that Supreme Court list of Jind was a fake list. Consequently, it is submitted that the Directorate List of District Jind is the genuine and original list.

Regarding Mahendergarh (Narnaul) lists

46. It has been informed to this court that the Head Quarter of District Mahendergarh is at Narnaul and therefore Mahendergarh lists have also been mentioned as Narnaul lists. The Supreme Court list (D-24) of this district is **Ex.PW43/B** and the Directorate list of this district is **Ex.PW15/O**.

47. Sanjiv Kumar (A3) has argued that at the time when the interviews for JBT candidates were being conducted, simultaneously the interviews of the candidates for the posts of C & V Teachers (Classic & Vernacular Teachers), Masters and Lecturers were also being conducted. It is argued by Sanjiv Kumar (A3) that during the investigation, CBI had seized the

award lists of interviews of C & V teachers of District Mahendergarh (Narnaul). It is argued that perusal of this list would show that its pattern of interviews marks tallies with the Directorate list. It is submitted that the CBI had not found this list to be a fake. Had it been so, CBI would have also prosecuted the officials, who prepared this award list of C & V teachers.

48. I have perused these lists, which has been exhibited during trial as **Ex.PW24/L** (D-60 Volume I to IV). On perusal of this interview award list of C & V teachers, I find that the interview pattern in these lists is also similar to the Directorate lists. It is argued by Sanjiv Kumar (A3) that if in the eyes of CBI, the interview pattern of the C & V teachers is not illegal and if this award list is not fake, how the Directorate lists, which contain the same pattern of interview marks as that of **Ex.PW24/L**, could be termed as the fake lists. Accordingly it is argued Sanjiv Kumar (A3) that not only the Directorate list of Mahendergarh but also all the Directorate lists having the same pattern of interview marks as contained in **Ex.PW24/L** are genuine lists. Consequently the Supreme Court list of District Mahendergarh and the other Supreme Court lists should be treated to be fake lists.

Regarding Bhiwani lists

49. The Chairperson of District Level Selection Bhiwani was Brahmanand (A9). Ms Vinod Kumari (A10), Maman Chand (A11) and Sawan Lal (A12)

were its members. The Supreme Court list of this district is **Ex.PW30/A** (D-25). The Directorate list is **Ex.PW15/M** (D-7).

50. Sanjiv Kumar (A3) argues that Vidya Dhar (A1) was the OSD to the Chief Minister and was also fully involved in creation of fake lists. It is argued that in fact the entire conspiracy of creation of fake lists was carried out by Om Prakash Chautala, the then Chief Minister, through his OSD namely Vidya Dhar (A1). My attention has been drawn to a defence witness namely Satbir (A1/DW1) examined by Vidya Dhar (A1) in his defence. This witness has testified that he is the close relative of Vidya Dhar (A1) and that he appeared in the interview for JBT teachers with roll no. 5506. He stated that his wife Sharda Devi (roll no. 5135) and his cousins namely Pradeep (roll no. 5505) and Ghanshyam (roll no. 5507) also appeared for this interviews but none of them was selected.

51. Sanjiv Kumar (A3) has drawn my attention to the interview marks of these close four relatives of Vidya Dhar (A1). I tabulate the same as under :

Name	Roll No.	Interview marks	
		Directorate List	Supreme Court List
Satbir	5506	7	17
Sharda Devi	5135	7	13
Pradeep	5505	7	18
Ghanshyam	5507	7	17

52. Sanjiv Kumar (A3) argues that the fact that Vidya Dhar (A1) the OSD to Chief Minister was able to get much higher interview marks in the Supreme Court list, whereas in Directorate lists their marks are much less. This proves that the Supreme Court list, which contains very high interview marks of the four close relatives of Vidya Dhar (A1), should be the fake list. Sanjiv Kumar (A3) has drawn my attention to his own testimony as A3/DW9 as well as his writ petition no. 93/2003 in which he has stated that at the instance of Om Prakash Chautala, Vidya Dhar (A1) had handed over to him i.e. Sanjiv Kumar (A3), the fake lists for implementation. In such a case there is no reason that relatives of Vidya Dhar (A1) should get less interview marks in the fake lists. It is therefore argued by Sanjiv Kumar (A3) that the Directorate list of District Bhiwani is genuine list and the Supreme Court list is a fake one.

MARKING PATTERN

53. The Supreme Court lists filed by Sanjiv Kumar before Supreme Court of India can be identified by his signatures in red ink and signatures of PW-43 Pushpa Ramdeo, the Dy. Registrar in green ink on the back of each sheet, whereas, the Directorate Lists do not bear their signatures. Rather,

these lists bear the signatures of six members of result compilation committee. The Directorate Lists were seized during investigation by CBI from Directorate, Primary Education. As a token of such receipt, one initial with the date of seizure i.e. 18.12.2003 can be seen on the back side of each sheet of these Directorate Lists. In this manner, these lists can be easily differentiated.

54. Sanjiv Kumar (A-3) argues that he has shown that the Directorate Lists of 12 districts were genuine lists. It is argued that the pattern of interview marks in the Directorate lists of the remaining 7 districts is also akin to the Directorate Lists of above discussed districts. Therefore, all the Directorate lists should be treated to be genuine lists and the Supreme Court lists should be declared to be the fake lists.

55. In order to appreciate the submissions of the parties on the marking pattern of the two sets of lists, I would like to reproduce the relevant portion of para 36 of the charge sheet as well as para 47 of the charge sheet as under:

para 36 “..... As per the “formula” given by Sh. Sanjiv Kumar (A3), the General category candidates whose names were in the list provided by Sh. Sanjiv Kumar were to be given interview marks between 17 and 19 and the others were to be given marks between 5 to 7. Similarly, for backward class – the candidates whose names were mentioned in “the list of favoured candidates” provided by Sh. Sanjiv

Kumar were to be given interview marks in the range of 6 to 8 and the rest were to be given interview marks in the range of 2 to 5 out of 20. This correlates with the pattern of marks found in the Directorate lists which were “retrieved” and released from the almirah on 16.09.2000 by Sh. Sanjiv Kumar and on the basis of which appointments have been made.”

para 47 “Investigation has disclosed the pattern of interview marks in false lists of 18 districts received from Directorate of Primary Education, Haryana and false lists of 17 districts received from Hon'ble Supreme Court of India and Sh. Sanjiv Kumar revealed the fact that the Directorate lists (false lists) are showing two ranges of marks only i.e. 3 to 6 in lower range and 16 to 20 in higher range. Such marks have been given purposely with a malafide intention to show favour to some candidates. Whereas, the pattern of interview marks in the Supreme Court lists & lists given by Sh. Sanjiv Kumar (A3) falls in the range between 6 to 20 out of 20 for all categories of candidates, which indicates the natural way of giving marks in any interview.”

56. Prosecution had sought the opinion of PW-16 Prem Prashant-IAS on this marking pattern. In his examination-in-chief, he testified as under:

“During investigation, Investigating Officer had shown me two sets of interview lists of the various Districts. In one set of list, the markings were very extreme and in the other set, it was normal as it normally should be.”

Prosecution also sought the opinion of PW-23 Rajni Shekri Sibal who testified as under:

“After perusing both the lists, I can say that logically D-14 M-688/2003 is

*false because at page no. 2 picked up randomly relating to candidates serial no. 14 to 26 beginning from Mahinder Singh, S/o Chottu Ram to serial no. 26 is Vinod Kumar, S/o Nand Lal, out of 12 candidates, all except one i.e. Vinod Kumar, S/o Nand Lal have been allotted interview marks between '0 to 5' out of '20', while Vinod Kumar Roll no. 65026 S/o Nand Lal is the only candidate on this page to have got '18' marks out of '20'. Same is the case at page no. 10 where all candidates have marks below '5' in most cases. Same is the case at page no. 8 where everyone has been given low marks. It appears that this pattern is there throughout to ensure that most candidates have been given marks at the lower extreme and only a few have been given marks between '17' to '20' i.e. on the other extreme end and **there is no intermediate marking. If one were to draw a graph of the number of people against the marks allotted, it would be skewed in the case of this list.***

Whereas list D-32 M655/2003 appears to be a normal interview list where the number of marks allotted against the number of total people interviewed appear as a normal bell shaped curve with majority being allotted marks in the median range and very few on the two extremities.”

57. I may point out that D-14 is the Directorate List of District Rewari and D-32 is the Supreme Court List of District Rewari. The above quoted answer of PW-23 has come after she was shown both these lists in the court.

58. I have carefully perused the Supreme Court Lists as well as the Directorate Lists of all the districts and one feature is very clear and common to all the Directorate Lists that some candidates have been given extreme interview marks on the higher side and most of the candidates have

got the low interview marks on the other extreme. In other way, it can be said that it is bunching of high range of marks for a few candidates in the Directorate Lists. On the contrary, there is no specific pattern of the interview marks in the Supreme Court Lists. Most of the people have got fairly good interview marks in these lists. For example, I take up the Supreme Court List of District Mahendergarh (Narnaul). It is interesting to note that most of the candidates have got '19', '19.50' marks. Only three or four candidates got '13', '12.5', '11' & '10' marks in the interview. No one has got lesser marks than that. Infact, only a few candidates have got less than 17 marks in this list. It is pertinent to note that all the interview marks on such a higher side has been given to the candidates irrespective of their caste and category. It appears that each District Level Selection Committee awarded interview marks as per its own wisdom but very low interview marks to any candidate are only exceptions.

59. On the other hand, in **the Directorate List of District Mahendergarh (Narnaul)** only a few have got the marks more than 17. The remaining candidates have been given very low marks ranging between 7 to 9 in General Category.

60. Same type of marking pattern can be seen in all the Directorate lists with minor variations.

61. This court has before it the version of many Chairpersons and members about the marking patterns given in the fake lists as per their statements u/s 313 CrPC, but, it would not be permissible to consider it against A-3. However, one of the accused persons namely Sher Singh (A-23) stepped in the witness box in his defence and examined himself as A-23/DW-1. I reproduce the relevant portion of his examination-in chief as under:

*“Sh. Anar Singh was having a slip of roll numbers only. The pattern was that the candidates **against whose roll numbers a star mark was there, they were to be given 19 ½ marks irrespective of their category, while candidates against whose roll numbers were encircled were to be given 19 marks irrespective of their category. For the remaining roll numbers in this list of general category 17 to 18 marks was to be given** and for those of general category whose roll numbers did not figure in this list they were to be given **between 6 to 8 marks in** interview. As far as BC candidates was concerned, for those whose roll numbers were there in this list, they were to be given 5 to 7 marks in interview, while those whose roll numbers were not figuring in this list, were to be given 3 to 4 marks in interview. For SC candidates whose roll numbers were there in the said list, were to be given 3,4 while those whose roll numbers were not in this list were to be given 2 to 3 marks in interview.”*

This evidence fully supports the prosecution version.

62. Sanjiv Kumar had availed the opportunity to cross examine this witness. He did not suggest to A-23/DW1 that this marking pattern pertains to the original lists and not to the fake lists prepared in 2000.

Analysis of the marks by Sanjiv Kumar (A-3)

63. Sanjiv Kumar submits that the prosecution has failed to come out with the proper analysis of the interview marks deliberately and thereby misled this court on the pattern of interview marks. He examined Pushpender Bhardwaj (A-3/DW-4) and Parveen Kumar (A-3/DW-5) in his defence. They testified that they had compiled, collated and analyzed the data on the basis of the copies of the award lists i.e. Directorate Lists, Supreme Court Lists and HARTRON lists provided by Sanjiv Kumar.

64. This analysis is contained in three spiral books namely **Ex.A3/DW4/A, Ex.A3/DW4/B and Ex.A3/DW4/C.**

A-3 has filed written submissions in which he has given his analysis as under:

“formula’ was allegedly being evolved and implemented, there was no D-129. What was indeed available was the list of appx. 8000 JBT applicants. This “formula” was to be applied to those applicants who were to be favored. Accordingly, the present analysis has merged all the 18 district level award lists (A series for BC candidates), and, thereafter, the lists of all those applicants who were given marks according to the said “formula” was short listed. Thereafter, the cut-off percentage was applied to such candidates and the result was arrived at whether these candidates who were given marks according to this “formula” were successful or not.

Example 1:

List A-1:	Total no. of applicants in all the 18 districts= 7345
List A-2:	Total no. of BC(A) candidates in A-1= 670
List A-5:	Total no. of BC(A) candidates getting 6-8 marks in interviews=

298

*List A-3: Total no. of BC(A) candidates finally qualifying= 235**List A-4: Total no. of BC(A) candidates from above list getting 6-8 marks=
154=154 / 235=65.5%**%age of BC(A) candidates who were given marks as per the said alleged "formula"
but who failed to qualify=List A-5- List A-4= 298-154=144; 144 / 154=65%***Example II:***List A-1: Total no. of applicants in all the 18 districts = 7345**List A-6: Total no. of BC(B) candidates in A-1= 440**List A-7: Total no. of BC(B) candidates qualifying=121**List A-9: Total no. of BC(B) candidates getting 6-8 marks in interviews=103**List A-8: Total no. of BC(B) candidates from List A-7 getting 6-8 marks in
interviews and qualifying
= 53**%age of BC(B) candidates who were given marks as per the said alleged "formula"
but who failed to qualify = List A-9-List A-8=103-53=50=50 / 103=50%***Example III:***List 14: Total no. of general category candidates in A-1= 1978**List 18: Total no. of general category candidates in List getting marks 5-7
in interviews as per the
'formula' for non favored candidates =392**So, the no. of candidates to be favored is List 14-List 18=
candidates 1586**List 16: Which is the list of those general candidates who were given
marks in interviews from 17-20
according to said "formula" and have qualified also =698**%age of general candidates who were to be favored (1586) and so were given 17-20
marks in interviews and qualified (698) = Just 63%*

Example IV:

List B-20: Total no. of general candidates getting 17 marks in D-129, i.e. the Directorate JML=454 out of a total of 1120 general candidates (List B-15); List B-21: If given 4 marks less in interview then no. qualifying=356, i.e. $356/454=78.4\%$

List B-23: Total no. of general candidates getting 18 marks in D-129, i.e. the Directorate JML=230 out of a total of 1120 general candidates (List B-15); List B-24: If given 4 marks less in interview then no. qualifying=208, i.e. $208/230=90.4\%$

List B-26: Total no. of general candidates getting 19 marks in D-129, i.e. the Directorate JML=137 out of a total of 1120 general candidates (List B-15); List B-27: If given 4 marks less in interview then no. qualifying=113, i.e. $113/137=82.48\%$

List B-29: Total no. of general candidates getting 20 marks in D-129, i.e. the Directorate JML=1 out of a total of 1120 general candidates (List B-15); List B-30: If given 4 marks less in interview then no. qualifying=1, i.e. $1/1=100\%$

Implication: *The IO has done no analysis of the correlation between the interview marks and the academic merit of a candidate. The above analysis proves that those who were given 17-20 marks in interviews were academically so good that giving them 4 marks less would also not affect their performance. Instead, if such were the precision of the “formula” calculation, then even a band width of 13-16 marking pattern for such candidates would have seen 84% of them through.”*

65. Sanjiv Kumar (A3) has argued that his analysis shows that even after the application of the formula implemented in the Directorate list, it is not hundred per cent success formula. The perusal of the Directorate lists and

the final result would show that the persons, who were given good marks as per this formula had failed and many persons, who had got very low marks as per this formula in the Directorate list, were able to make it in the joint merit list. Therefore it is argued that the plea of prosecution regarding preparation of the fake lists as per the formula/marking pattern mentioned in the charge sheet does not hold good.

The analyses of the interview marks by this court.

66. For this analysis, I would like to take up the Directorate list of District Bhiwani and I would like to see as to whether the persons, who had got 17 marks in interview or more than that, had actually been selected or not. I may point out that CBI had seized from Mula Ram (PW15), the then Assistant Director Primary Education, the Directorate list as well as the result/joint State Merit list **Ex.PW55/W** (D-129) prepared by the HARTRON and proved by Mukesh Bajaj (PW55), the then Assistant General Manager of HARTRON at the relevant time. This comparison by this court is tabulated as under :

Sl. No.	Roll No.	Name of Candidates	General Category Interview marks out of 20	Selected/Not selected	Status as per State Merit list

1.	5003	Manju	18	Selected	762
2.	5006	Neelam Kumari	17	Selected	353
3.	5007	Sheela	19	Selected	998
4.	5008	Susheela Devi	19.50	Selected	63
5.	5009	Mukesh Devi	18	Selected	1085
6.	5010	Shakuntala	19	Selected	1277
7.	5012	Snehlata	18	Selected	1009
8.	5016	Annu	17	Selected	37
9.	5018	Neelam	19	Selected	604
10.	5020	Promila Gill	17	Selected	1115
11.	5027	Seema Rani	17	Selected	905
12.	5029	Rajesh Rani	18	Selected	28
13.	5032	Sanju Devi	19	Selected	110
14.	5038	Krishna Sharma	18	Selected	700
15.	5040	Manju Rani	19	Selected	106
16.	5041	Alka	18	Selected	492
17.	5047	Vedwanti	18	Selected	274
18.	5048	Yashwanti	18	Selected	780
19.	5050	Bir Mati	17.60	Selected	1460
20.	5051	Manoj Kumari	18	Selected	239
21.	5053	Sarita Devi	18	Selected	404
22.	5058	Suman	18	Selected	514
23.	5059	Monika Dalal	19	Selected	214

24.	5060	Sunita Devi	17	Selected	800
25.	5061	Veena Chaturvedi	19	Selected	145
26.	5064	Savita Singh	17	Selected	839
27.	5067	Babita	18	Selected	169
28.	5068	Madhu Bala	17	Selected	415
29.	5070	Sushma	17	Selected	330
30.	5075	Rosie Jain	17	Selected	844
31.	5076	Sunil Kumari	18	Selected	245
32.	5081	Kanta Kumari	17	Selected	659
33.	5083	Mamta Devi	17	Selected	680
34.	5085	Sunita Gupta	17	Selected	1516
35.	5088	Neelam Rani	19.50	Selected	115
36.	5094	Neelam Yadav	18	Selected	511
37.	5099	Sharmila	17	Selected	410
38.	5101	Sudesh Kumari	18	Selected	532
39.	5104	Manjeet Kumari	18	Selected	282
40.	5105	Kanchan Prabha	19	Selected	06
41.	5106	Versha Rani	19	Selected	27
42.	5108	Neelam	18	Selected	293
43.	5112	Yogita Rani	18	Selected	174
44.	5113	Mukesh Kumari	18	Selected	361
45.	5120	Anita	18	Selected	64

46.	5122	Mamta Rani	17	Selected	792
47.	5128	Saroj Bala	17	Selected	1043
48.	5173	Rajbir	17	Selected	1212
49.	5175	Narender Kumar	19	Selected	67
50.	5176	Rajesh Kumar	18	Selected	120
51.	5184	Ramphal Singh	17	Selected	753
52.	5185	Ombir	17	Selected	1501
53.	5188	Manoj Kumari	17	Selected	944
54.	5191	Mukesh Kumar	18	Selected	367
55.	5193	Vijay Kumar	17	Selected	1124
56.	5196	Dara Singh	18	Selected	107
57.	5197	Sunil Kumar	17	Selected	1018
58.	5198	Kamal Singh	17	Selected	398
59.	5199	Yakvir Singh	17	Selected	1110
60.	5200	Jitender Kumar	19	Selected	414
61.	5201	Rajesh Kumar	17	Selected	1035
62.	5202	Surender Singh	18	Selected	154
63.	52003	Kuldeep Kumar	17	Selected	502
64.	5205	Surender Singh	19.50	Selected	300
65.	5207	Sunil Kumar	17	Selected	793
66.	5211	Surender Singh	17	Selected	1184
67.	5219	Manoj Kumar	17	Selected	1414
68.	5226	Mukesh Kumar	19	Selected	68

69.	5227	Narvinder	19	Selected	113
70.	5228	RajeshKumar	17	Selected	783
71.	5230	Ajay Singh	17	Selected	827
72.	5233	Surender Pal	17	Selected	510
73.	5234	Shankar Lal	17.50	Selected	983
74.	5239	Anil Kumar	17	Selected	909
75.	5242	Raj Kumar	17	Selected	892
76.	5243	Vinay Kumar	18	Selected	531
77.	5246	Kuldeep Singh	17	Selected	1202
78.	5249	Bhupinder Singh	17	Selected	1005
79.	5250	Rajesh Malik	17	Selected	1483
80.	5251	Surender Kumar	17.50	Selected	262
81.	5253	Jai Parkash	18	Selected	407
82.	5258	Ashok Kumar	17	Selected	1338
83.	5261	Pawan Kumar	18	Selected	517
84.	5263	Ajit Kumar	18	Selected	441
85.	5264	Rajesh	17	Selected	962
86.	5265	Hans Raj	17	Selected	999
87.	5266	Jai Parkash	18	Selected	213
88.	5268	Durga Parsad	18	Selected	418
89.	5272	Ashok Kumar	17	Selected	763
90.	5278	Satish Kumar	18	Selected	906
91.	5280	Sandeep	17	Selected	954

92.	5281	Joginder Singh	19.50	Selected	848
93.	5282	Bhim Singh	17	Selected	1367
94.	5288	Naresh Kumar	17	Selected	1113
95.	5289	Naresh Kumar	18	Selected	523
96.	5290	Sombir	17	Selected	1240
97.	5291	Rajpal	18	Selected	225
98.	5292	Raj Kumar	17	Selected	1251
99.	5293	Jaibir Singh	18	Selected	893
100.	5301	Raj Karan	18	Selected	104
101.	5304	Surender Singh	17	Selected	1012
102.	5306	Subash Chander	18	Selected	166
103.	5307	Anil Kumar	17	Selected	1112
104.	5308	Kuldeep Singh	19	Selected	105
105.	5310	Sunil Kumar	18.50	Selected	160
106.	5320	Sanjay Kumar	17	Selected	1160
107.	5321	Pardeep Kumar	18	Selected	449
108.	5323	Satish Kumar	19	Selected	102
109.	5325	Tarun Kumar	18	Selected	180
110.	5327	Pushpender Singh	17	Selected	1252
111.	5329	Sanjay Kumar	18	Selected	823
112.	5334	Suresh Kumar	18	Selected	512
113.	5335	Anil Kumar	18	Selected	329

114.	5336	Ashok Kumar	19.50	Selected	344
115.	5338	Om Parkash	17	Selected	1317
116.	5339	Rakesh Kumar	19	Selected	18
117.	5343	Kuldeep Singh	19	Selected	130
118.	5345	Ravi Parkash	17	Selected	1320
119.	5352	Jai Pal	19.50	Selected	53
120.	5358	Sombir Singh	18	Selected	739
121.	5361	Pawan Kumar	18	Selected	765
122.	5366	Anil Kumar	18	Selected	522
123.	5369	Amarjeet Singh	19	Selected	44

67. Although few persons with the roll numbers 5013, 5043, 5055, 5063, 5077, 5100, 5111, 5174, 5267, 5274, 5284, 5314, 5479 and 5034 have got 5 or less than 5 marks in the Directorate award lists of district Bhiwani, but still they were able to get their names in the merit list by dint of their qualification/academic marks. **But none of the candidates, who got 17 or more than 17 marks, remained unsuccessful.**

68. Perusal of the interview marks of the BC(A) category as well as the remaining categories would show that whosoever got 17 marks or more was got selected. See the table as under :

Sl. No.	Roll No.	Name of Candidates	Backward Class (A) Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	5443	Sunil Kumar	19.50	Selected	942
2.	5473	Dinesh Kumar	19.50	Selected	784
3.	5495	Jai Singh	19.50	Selected	1673
4.	5497	Naresh Kumar	19.50	Selected	1192

Sl. No.	Roll No.	Name of Candidates	Backward Class (B) Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	5169	Sudesh Kumari	19.50	Selected	1188
2.	5413	Krishan Kumar	19.50	Selected	1292

Sl. No.	Roll No.	Name of Candidates	DESM Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	5181	Bhupender	19	Selected	181
2.	5189	Chanderbhan	17	Selected	908
3.	5192	Jagbir singh	18	Selected	335
4.	5194	Anil Kumar	17	Selected	1353
5.	5222	Vinod Kumar	17	Selected	1386
6.	5237	Vijay Singh	17.50	SELECTED	1168
7.	5238	Vijay Kumar	18	Selected	570

8.	5247	Surender	18	Selected	312
9.	5259	Sunil Kumar	17	Selected	1028
10.	5260	Vijay Singh	18	Selected	574
11.	5295	Ramesh Kumar	18	Selected	458
12.	5296	Sombir	17	Selected	1284
13.	5300	Ajit Singh	17.50	Selected	918
14.	5309	Rakesh Kumar	18	Selected	534
15.	5351	Sunil Kumar	17	Selected	647
16.	5372	Jaspal	19.50	Selected	380
17.	5373	Bhoop Singh	18	Selected	880

Sl. No.	Roll No.	Name of Candidates	PH Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	5224	Ramesh Kumar	17	Selected	1605
2.	5244	Attar Singh	17	Selected	1058
3.	5349	Raj Singh	17	Selected	1241
4.	5374	Satish Kumar	17	Selected	1156

69. Therefore the total 150 candidates were given 17 or more than 17 interview marks in the Directorate list and all of them got selected. This certainty of their success came from the formula, which was devised to ensure their success. As per this formula, all the other candidates were

given very low marks i.e. below 6 marks in general category. The pattern of interview marks for the other categories also matches more or less with the formula given in the testimony of Sher Singh (A23/DW1) and para 36 and 47 of the charge sheet, for the purpose of preparation of the fake lists.

70. Now I would like to see as to how many candidates in District Panipat got 17 or more interview marks in the Directorate list and whether they have been declared successful in the final result. A comparison of the Directorate award list and the final result yields following results :

Sl. No.	Roll No.	Name of Candidates	General Category Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	55001	Narender Singh	18	Selected	992
2.	55002	Sunil Kumar	17	Selected	571
3.	55007	Naresh Kumar	17	Selected	560
4.	55009	Brijesh singh	17	Selected	938
5.	55013	Sultan Singh	18	Selected	916
6.	55014	Ravinder Singh	17	Selected	1232
7.	55016	Rajpal	18	Selected	1230
8.	55022	Ramesh Kumar	17	Selected	1309
9.	55024	Jai Bhagwan	18	Selected	837

10.	55023	Sunil Kumar	17	Selected	997
11.	55025	Ramesh Chander	17	Selected	1068
12.	55026	Ved Prakash	18	Selected	1053
13.	55027	Sanjeev Dahiya	18	Selected	1412
14.	55029	Raj Kamal	18	Selected	802
15.	55033	Deepak Malik	19	Selected	737
16.	56001	Sushila Devi	18	Selected	455
17.	56002	Geeta Rani	19	Selected	47
18.	56003	Sushma	17	Selected	577
19.	56004	Rituraj	19	Selected	868
20.	56008	Seema Devi	19.50	Selected	90
21.	56009	Anita devi	17	Selected	360
22.	56013	Suman	18	Selected	1026
23.	56017	Sahib Kaur	18	Selected	358
24.	56029	Anju	18	Selected	61

Sl. No.	Roll No.	Name of Candidates	of BC(A) Category Interview marks out of 20	Selected/Not selected	Status as per State Merit list
1.	58002	Poonam	19.50	Selected	1333

Sl.	Roll	Name of	BC(B) Category	Selected/No	Status as
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No.	No.	Candidates	Interview marks out of 20	t selected	per State Merit list
1.	5838	Wakil Singh	19.50	Selected	769

71. Therefore a total 26 candidates were given 17 or more than 17 interview marks and all of them have been selected. I need not mention that all the remaining persons of general category have been given less than 6 marks. The category-wise above stated formula also holds good in this list.

72. There is one another purpose for which I have tabulated the results as above. The district wise existing vacancies were calculated and thereafter the same were mentioned in the note **Ex.PW38/C** (page no.15 of D-40). District Bhiwani had only 60 vacancies. However the above quoted table shows that 150 candidates were given more than 17 marks and all were selected and given appointments. Many more, with very less interview marks, were also able to find their place in the merit list thereby increasing the number of successful candidates to be 312 against the existing vacancy of 60. Now the question was as to where these extra candidates would be adjusted. The only method of adjusting them was that less appointments should be made from other districts. This appears to be the reason that in Panipat only 26 persons were given 17 or above interview marks, though,

the vacancies were 97. The rest of the candidates from general category were to be given 5 to 7 marks. This method ensured that less candidates get selected from such disfavoured districts so that the excess candidates from favoured districts may be adjusted. The above discussion proves the contention made in para 43 of the charge sheet which I reproduce as under :

“Investigation disclosed that the number of JBT Teachers declared successful district wise were not in accordance with the vacancies published, district, wise, in the Advertisement dated 15.11.99 (Pri. Edn.), which shows that the candidates of certain districts were favoured, specifically of districts Bhiwani, Fatehabad, Jind & Mahendergarh. Sh. Ajay Singh Chautala (A5) had represented the Bhiwani Constituency of Haryana State as a Member of Parliament in the year 2000.

Sl. No.	Name of District	No. of vacancies shown in advertisement	No. of candidates declared passed.
1.	Ambala	143	57
2.	Bhiwani	60	312
3.	Faridabad	161	96
4.	Fatehabad	292	335
5.	Gurgaon	210	171
6.	Jind	120	265
7.	Jhajjar	259	196

8.	Karnal	408	146
9.	Kaithal	335	224
10.	Kurukshetra	304	163
11.	Mohindergarh	83	283
12.	Panipat	97	47
13.	Panchkula	13	27
14.	Rewari	42	161
15.	Sirsa	214	250
16.	Sonepat	158	172
17.	Yamuna Nagar	292	98
18.	Rohtak	15	29

73. Here, I point out that whereas the vacancy position mentioned above is proved through **Ext.PW38/C (D-40 page 15)** & advertisement **Ext.PW38/H (D-40 Vol.I page 129)** and the number of candidates declared successful can be verified from the result Ext.PW55/W. The roll number and category wise result with the cut off marks of the last candidate in the respective category is placed in D-40 Vol. II at page no. 294 to 298. It is the same result which was published in the newspaper dt. 07.10.2000 Indian Express placed at page no. 378 of this file. PW-58 Balram Yadav, the Assistant in the office of Director, Primary Education, has also proved the vacancy position in his evidence.

74. Agya Ram Batra (PW-52), the Assistant Director in the office of Director-Primary Education proved a note **Ext. PW52/C** which contain the detailed instructions for conducting the interviews. As per these instructions, certain roll numbers were allotted to each district and thereafter the Chairpersons were to further allot the roll numbers to the candidates. The following roll numbers were allotted to each district:

Ambala	0001 to 5000	Kaithal	45001 to 50000
Bhiwani	5001 to 10000	Narnaul	50001 to 55000
Faridabad	10001 to 15000	Panipat	55001 to 60000
Fatehabad	15001 to 20000	Rohtak	60001 to 65000
Gurgaon	20001 to 25000	Rewari	65001 to 70000
Jhajjar	25001 to 30000	Sirsa	70001 to 75000
Jind	30001 to 35000	Sonepat	75001 to 80000
Karnal	35001 to 40000	Yamuna Nagar	80001 to 85000
Kurukshetra	40001 to 45000	Panchkula	85001 to 90000

Thus, a roll number of a candidate would also reflect as to in which district, such candidate was interviewed.

Checking of joint merit list at State level confirms the above stated data regarding the candidates selected from each district.

The earlier discussion by this court of district Bhiwani and Panipat as

example makes it clear that with a view to adjust the exceeding candidates from the favoured districts like Bhiwani, the other districts have been prejudiced. This was done by adopting a method of giving 17 or more marks to very limited candidates in the disfavoured districts. **This fact shows the brains working at the highest level as to how the interview marks are to be plotted in the fake award lists to be prepared and to be implemented.** I have already stated that Supreme Court lists do not exhibit any specific pattern. In fact, the manner in which the interview marks have been given in the Supreme Court lists, it cannot promise success to any favoured candidate, even if, he is getting 17 or more marks, simply because most of the candidates, who got less than 17 marks, were generally getting more than 11 marks. In fact the number of candidates scoring 17 or more than 17 marks are so high that a favoured candidate earning the highest in the interview cannot be assured of his success, since the other candidates, armed with better academic percentage etc. are not scoring very low interview marks. Therefore, the manner in which the interview marks have been given in Supreme Court lists, does not prevent 'low marks' candidates from overtaking such 'high marks' candidates and from throwing such favoured candidates out of the list of successful candidates/joint State merit list.

75. Such a situation led to the efforts for making second award lists with a view to make the success of the favoured candidates a definitely reality. The analysis of the Directorate lists and Supreme Court lists makes it very clear that the formula adopted to create the Directorate lists was the simplest and the only method to ensure their success.

Further Analysis

76. First of all, I shall take up the analysis of Sanjiv Kumar (A3) of the data taken from the Supreme Court lists and the Directorate lists. The data in the spiral book **Ex.A3/DW4A**, relied upon Sanjiv Kumar (A3) is in respect of the Directorate lists. The data in the spiral book **Ex.A3/DW4B** is about the joint merit lists. The spiral book **Ex.A3/DW4C** is the data collected from the Supreme Court lists.

77. It needs to be mentioned here that annexure A-1 in Ex.A3/DW4/A has been titled as **“Combined Merit List After Merging District Award Lists (Directorate)”**. Annexure C-1 of Ex.A3/DW4/C is titled as **“Combined Merit List from Supreme Court Lists”**. But none of these annexures are the merit lists. **These are the roll number wise lists.** The exercise of preparing merit lists from Supreme Court lists has not been carried out in any of the spiral books. It appears that the word “merit” has been written inadvertently in the captions of these annexures. However I may point out

that the merit list prepared by HARTRON on the basis of Directorate lists is available before this court and same has been proved as **Ex.PW55/W** (D-129).

78. In cross examination, neither the prosecution nor any of the accused persons has raised any objection as to the correctness of the data compiled in these spiral books. Infact, the prosecution in the cross examination has only alleged that the analysis is vague in nature. [see the cross examination of **A3/DW4** Pushpender Bhardwaj examined in defence by Sanjiv Kumar (A3).] None of the accused persons, nor prosecution has found fault in the particulars regarding the roll numbers, name of candidates, their categories, marks and percentage. Therefore, all these particulars in the spiral books must be treated to be correct.

79. As an abundant caution, I have cross checked randomly the roll numbers, name of candidates etc. from the Supreme Court lists, Directorate lists and the State merit lists and I have found the particulars to be correct.

80. It is necessary to mention here that the prosecution, along with charge sheet had filed an annexure "C", which gives the roll numbers and the names of the candidates whose marks had been increased or reduced in the Directorate lists, if compared to the Supreme Court lists. I have also randomly checked it with the original Directorate and Supreme Court lists

and found it to be correct. The Annexure 'C' shows that marks of 1577 candidates were increased and marks of 6103 candidates were reduced. Some accused persons argued that prosecution should have examined the witness, who had done this exercise so as to put him under cross examination by them and therefore it is argued that these lists should not be read in evidence against the accused persons.

81. In this regard, I would say that even if the said lists of annexure "C" are not read in evidence, still the perusal and comparison of the Directorate lists and Supreme Court lists would show that in Directorate lists a few persons have been given very high marks from 17 to 19.50 in interviews but most of the accused persons have been given very low marks. A comparison of the marks of Directorate lists with Supreme Court lists would show that marks of most of such persons had been reduced and the analysis of **Annexure 'C'** is correct.

82. However, this analysis by the prosecution was not sufficient. Sanjiv Kumar (A3) has submitted that he has spent a huge money in preparation of the data in the three spiral books proved before this court by **A3/DW4**. A careful perusal of the data contained in these spiral books would show that although a lot of hard work has been done in preparation of the analysis but the most important analysis which should have been done by

Sanjiv Kumar (and by the prosecution as well) is missing. In the spiral books, the percentage wise merit lists of the Supreme Court lists has not been prepared. (However, the percentage wise merit list prepared by HARTRON has been proved by prosecution as **Ext.PW55/W.**) Since the part **Supreme Court list of District Kurukshetra** and the **list of District Panipat** are not available having not been filed by A-3, such percentage wise merit lists could have been prepared taking the data from the candidates of the remaining districts, as per Supreme Court lists and the Directorate lists. For the purpose of analysis, the vacancies of district Kurukshetra, Rohtak and Panipat should have been deducted from the total vacancies. Thereafter it should have been analyzed as to how many candidates, who got the job on account of the merit in the Directorate lists, would have not got the job, in case the Supreme Court lists been implemented. Further, it could have been analyzed as to how many meritorious candidates of Supreme Court lists would have got the job, had the Supreme Court lists been implemented. This job could have been done easily with the help of the computers. I may add here that in the Directorate lists as well as the Supreme Court lists, the percentage of marks have been given under the head of **grand total**.

83. Now when such analysis is not available to this court, I have tried

another method to find out as to whether there are some unsuccessful candidates, who would have been successful, had the Supreme Court lists been implemented.

I have scanned through all the Supreme Court lists. Even a bird's eye view would be enough to know that only a handful candidates have got more than 66.80% of marks in grand total. A perusal of all the Supreme Court lists would also make it clear that as many as **565** candidates have got more than 66.80% of marks. I may point out that the Supreme Court list of Panipat and Rohtak are not available. From the Directorate list of Panipat, it is found that 138 candidates were interviewed by the District Level Selection Committee. Similarly the Directorate list of Kurukshetra (D-16 part 1) is available but its corresponding Supreme Court list is not available. The perusal of D-16 (1) shows that as many as 508 candidates were interviewed by M. L. Kalra, the then Chairman. Similarly, in Rohtak 116 candidates were interviewed. Presuming that all these candidates (i.e. $138 + 508 + 116 = 762$) had also got more than 66.80% marks, a figure of total candidates getting 66.80% or more marks would come out to be **1327**. Since the total vacancies of **general candidates** were **1329** (if we calculate the district wise vacancies as shown in the note **Ex.PW30/C**, D-40 page 15 as well as as per the advertisement **Ext.PW38/H** (D-40 Vol. I placed

between page no. 129 & 130), all the candidates getting more than 66.80% of marks must have been selected in the general category itself, irrespective of the fact as to whether they belong to general category or the other categories like BC(A) etc., provided that the Supreme Court lists are implemented.

84. Now let it be seen as to whether there are candidates, who got more than 66.80% of marks in Supreme Court lists (irrespective of their category) but were not able to find place in the list of successful candidates/the State merit list (i.e. **Ext.PW55/W**). In view of the candidates being large in number, this court cannot enter into an exhaustive analysis but a random check disclosed that following candidates, who got more than 66.80% in the Supreme Court lists, were not declared successful in the final result prepared on the basis of Directorate lists, because their marks were drastically reduced in the Directorate lists :

Roll No.	Name	Interview marks in Supreme Court lists	Grand total/percentage in Supreme Court lists	Interview marks in Directorate lists	Grand total/percentage in Directorate lists
11002 (Faridabad lists)	Soniya Rani (General Category)	18	67.20%	5	54.20

35014 (Karnal lists)	Sanjay Kumar (General Category)	18	66.91%	6	54.91
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85. The above mentioned candidates therefore must have got selected, had **Supreme Court lists** been implemented. But since in the Directorate lists, their interview marks and grand total have been shown to be very low, they were not shown as successful candidates in the result declared and published in the newspaper (placed at page no. 378 of D-40 Vol. II, also at page no. 295). This result shows that the **last candidate** declared successful in General category secured **57.38 marks**. The waiting list for General category shows that the last candidate had secured **55.85 marks**. The HARTRON list/Joint State Level Merit List **Ext.PW55/W (D-129)** prepared on the basis of Directorate Lists, also confirms the aforesaid cut off marks for General category candidates as well as the waiting list of General category. Thus, the aforesaid candidates have not been registered even in the waiting list, what to talk of the list of successful General candidates. If a detailed analysis is done, large number of such unfortunate candidates would be disclosed.

86. If one award list is replaced with another award list having different marks than the first one, it is natural that a number of persons up in the

merit in first list, would fail if the merit is prepared on the basis of the second award list. The above mentioned example of the candidates was not in fact needed, but in order to reinforce this proposition, the aforesaid exercise was done by this court. Consequently, it also follows that many candidates, who would have failed on implementation of the Supreme Court lists, must have figured as successful candidates in the State Merit List prepared on the basis of Directorate lists. Here, I may point out that this data and comparison of figures may admit some minor variation, as it was done by me without any help from any expert or assistance from any of the parties in this case.

87. Sanjiv Kumar (A3) has drawn my attention to Annexure B-1 of **Ex.A3/DW4/B**, which is the list of candidates of general category declared successful in the list prepared by the HARTRON. He has drawn my attention to the fact that the “formula”, which is alleged to be devised by him, is absolutely imperfect because despite implementation of this formula a large number of candidates in general category, who got only 2 to 5 marks were selected. Similarly, it is argued that a large number of scheduled caste and backward category candidates have also made inroads into general lists. Therefore the allegations that the purpose of creating the Directorate lists was to contain the candidates of other categories namely BC(A) etc. from

encroaching the space of general candidates stands falsified. I have considered this argument and have perused this list Annexure ' B-1' of **Ex.A3/DW4/B** carefully. I have already stated that I have no reason to doubt the particulars and data produced by Sanjiv Kumar (A3) before this court. More so, when none of the parties has raised any finger of doubt on the same. I find substance in the submissions of Sanjiv Kumar (A3) that despite implementation of the formula as discussed above, many candidates of SC(A), BC(A) etc. have been able to come in the category of general candidates. But it must not be forgotten that if the Supreme Court lists were implemented, the reserved category candidates figuring in the space meant for the general category would have been much higher in number than the Directorate lists. The formula devised and implemented in the Directorate lists has contained this trend to a great extent. Rest of the arguments and analysis of data by per A-3 are only hair splitting and nothing more.

88. From the above discussion four facts stand proved:

(i) There is no specific pattern of granting interview marks common to all the Supreme Court lists of various districts and it cannot be said that any person has been specifically favoured. Nor there is any pattern to show

different bunch/range of interview marks to various categories.

(ii) The pattern of interview marks as appearing in the Directorate Lists more or less serves the purpose of containing the candidates of reserved categories within the vacancies arising in their respective categories.

(iii) Allotment of 17 or more than 17 interview marks to certain candidates (in contrast to the remaining candidates getting very low interview marks) is almost a sure guarantee of selection of such candidates.

(iv) In certain districts, high interview marks of 17 or more than 17 were given to more candidates in the Directorate lists than the vacancies in the respective district. On the other hand, in a few districts, only a small number of candidates were given this type of marks. The inevitable conclusion is that the minds were working zealously prior to preparation of the Directorate lists so that the favoured candidates exceeding the vacancies could be adjusted against the vacancies of the other districts.

89. In view of above discussion, I would come back to the question as to whether the pattern of interview marks, as appearing in both the sets of lists, justifies the contention of A-3 or it proves the prosecution case.

Sanjiv Kumar A-3 in his petition before Supreme Court as well as in his defence evidence as A-3/DW-9 is very categorical that the political

bigwigs wanted to implement the fake lists i.e. the Supreme Court lists, which had been got prepared by them from the Chairpersons and the members of District Level Selection Committees. In his cross examination by Ld. Special Public Prosecutor, Sanjiv Kumar elaborates the background which perpetuated the creation of second set of award lists as under:

“The predecessor government was headed by Sh. Bansi Lal with the support of the BJP. Thereafter, about 12 MLAs defected from the coalition government of Haryana Vikas Party headed by Sh. Bansi Lal to support the Indian National Lok Dal (INLD) headed by Sh. O.P. Chautala. It is pertinent to mention here that during this coalition government of INLD, the original award lists were prepared in the month of December, 1999-January, 2000. Thereafter, the political situation took a turn and in the mid-term elections called by Sh. O.P. Chautala in the year 2000, the INLD got a clear cut majority on its own strength and steam without requiring the support from any other political party, although, the INLD was supported by the BJP. It was probably this very important political development in the State of Haryana which prompted creation of a second set of award lists which would be more reflective of the preferences of the ruling government.”

90. This testimony of Sanjiv Kumar shows that the purpose of creating the new set of lists was to appoint the candidates favoured by the INLD, which had formed its government on its own majority without depending upon the support of any other party or independents. In such a situation, only a carefully created fake award list would serve the purpose of selecting the

favoured candidates. I have already demonstrated that this objective was achieved in the Directorate Lists by adopting three fold mechanism. One, by giving very high interview marks to certain candidates and by giving very less marks to the remaining candidates. Two, by giving high interview marks to greater number of candidates of the favoured districts and by giving high interview marks to lesser number of candidates in other districts as compared to the vacancies. Three, by creating a specific pattern of interview marks to each category so that, as far as possible, the candidates of reserved categories do not reduce the space for general category. In this manner, not only specific candidates have been favoured, but also, specific districts have been favoured. This pattern further checked, to a great extent, the possibility of reserved candidates occupying the vacancies meant for general candidates.

91. Sanjiv Kumar has argued that the Supreme Court lists were prepared in a great haste resulting in so many irregularities, hence these lists should be treated to be fake. I disagree with this submission. In fact, Supreme Court Lists show the inexperience of the members of the selection committees resulted in some irregularities. Moreover, the Supreme Court lists do not exhibit any carefully crafted pattern. On the other hand, the Directorate lists not only show a category wise pattern of interview marks

which is common to the lists of all the districts, but, also this pattern is also reflective of a shrewd mind working in such a fashion that on one hand the candidates of reserved categories are generally kept within their quota, on the other hand, the favoured candidates get such a high interview marks, irrespective of their categories, that they must figure in the list of successful candidates. Further, the favoured districts like Bhiwani also get benefitted at the cost of the candidates from other less favoured districts. Therefore, it stands proved that the Directorate lists have been prepared in a well planned manner with a well thought design. On the other hand, the interview marks in the Supreme Court lists do not exhibit any common pattern. It appears that every district level selection committee was awarding interview marks according to its own assessment of the candidates appearing before them. Due to this reason, there is no bunching of interview marks in the Supreme Court lists, whereas a common pattern and bunching of interview marks is visible in all the Directorate lists leading to an irresistible conclusion that some central authority in State of Haryana had planned and executed the creation of Directorate lists with clear objectives in their minds.

92. Now I take up the points raised by Sanjiv Kumar (A-3) in respect of the lists of the districts.

In respect of the list of district Panchkula, it is argued that as per the testimony of PW-65 U.Ramamohan-SP Cyber Crimes, the computer seized by the CBI from Hitesh Bansal from which a print out of the Supreme Court award list of district Panchkula was updated upto the year 2000. It is argued that this proves that the Supreme Court list of Panchkula was prepared on this computer in the year 2000. I disagree with the submissions of Sanjiv Kumar (A-3). There is a difference between computer having been updated upto the year 2000 and computer having the 2000 version of the Microsoft. If the version of MS-Office is of the year 2000, it cannot contain the data of the year 1999. But if it has an old version and has been updated upto the year 2000, the data of the previous years would remain in the computer and can be retrieved. It is pertinent to note that in his examination-in-chief, PW-65 testified that the print out of the award list is under the file names S.doc, S1.doc and S2.doc and the dates of creation of these files in the hard disc was 17.12.1999. In cross examination by A-3, PW-65 testified that **the version of MS-Office in the hard disc was updated in MS-Word 2000**. Sanjiv Kumar did not put any specific question as to how the data of the year 1999 was found in the hard disc despite the computer having been updated in MS-Word 2000. No suggestion has been given that any data of the year 1999 would not be retrievable in case the

computer is updated in MS-Word 2000. In such circumstances, the points raised by Sanjiv Kumar is of no value. Sanjiv Kumar has drawn my attention that the hard disc of the computer was accessed upto November-2004, as per the testimony of PW-65 and therefore it clearly shows that CBI had changed the date of the document (i.e. the Supreme Court award list of Panchkula typed in the computer) to a back date of 1999. Perusal of the testimony of PW-65 would show that the hard disc was received in the office of PW-65 on 11.08.2004 in duly sealed condition. CBI did not have any motive to manipulate the dates in November, 2004. Infact, PW-65 has explained in cross examination that the hard disc shows access upto November-2004 but **this access dates are dependent on many issues**. It does not imply that CBI had changed the date in this particular data. Therefore, the expert's evidence does not support the case of A-3, rather, it fully supports the direct testimony of Hitesh Bansal (PW-20) who testified that the award list of Panchkula was fed in the computer (item no. 2 i.e. hard disc of the said computer) on 17.12.1999 and it tallies with the print out of the award list (item no. 8) except the list of Ex-Servicemen which is reflected in the said documents.

Now I advert to the substantial evidence coming on record.

PW-18 Pradeep Kumar is a JBT teacher working in the office of

District Primary Education Officer-Panchkula. He testified that Sheesh Pal Singh (A-43) was DPEO-Panchkula, Rekha Sharma (A-44) was Block Education Officer and Raksha Jindal (A-45) was working as Principal, Govt. Sr. Secondary Girls School, Sector-7, Panchkula during the period 1999-2000. He identified the signatures of all these accused persons on Supreme Court award lists as well as the Directorate List of Panchkula. He also testified that in the month of January-2000 he had gone alongwith Rekha Sharma (A-44) for computerization of JBT teachers interview list which was prepared on the computer in the presence of Rekha Sharma. Prosecution also examined Hitesh Bansal (PW-20) who had fed in the said award list in his computer. He testified that Rekha Sharma had come to him during December, 1999 for some computer job which was done by him. In the year 2004, R.N. Azad-Addl. SP-CBI inquired from him about the computer job which he had done for Rekha Sharma during December, 1999. He testified that since printer of the computer was out of order, he got a print of merit list for the post of JBT teachers (General) in a floppy from his computer. R.N.Azad had taken the said floppy as well as the hard disc of his computer and another print out of the said work was also taken from that floppy. Sanjiv Kumar has drawn my attention to the fact that PW-18 has stated that the computerization of result of JBT teachers was done in

January-2000 whereas PW-20 is testifying that it was done in December-1999. It is submitted that in view of the two contradictory statements, the view favourable to the accused should be taken by this court and it should be presumed that the result was fed in the computer in the year 2000. I disagree with his submissions. There is not much difference of time in December 1999 and January 2000. In fact, by way of cross examination, A-44 also admits to this fact. The testimony of Hitesh Bansal regarding the time when this computer job was done has to be accepted because this is supported by the expert's opinion (PW-65) who has testified that the files which contain this document in the computer is dated 17.12.1999 since this data fed on 17.12.1999 fully tallies with the Supreme Court list of Panchkula, therefore, it stands proved that the Supreme Court list of Panchkula is the genuine list. Consequently, the Directorate list of District Panchkula has to be termed to be a fake list.

Regarding Rewari Lists it is argued that in the Supreme Court list of District Rewari, Darshan Dayal Verma (A-50) has signed as Ex-DPEO. It is argued that he had conducted the interviews as the Chairman of the District Level Selection Committee being DPEO-Rewari for first three days. Therefore, under his signatures in the Directorate Lists for first three days, he has written his designation as 'DPEO'. On the other hand, it is argued

that since Supreme Court lists were prepared in the year 2000 when Darshan Dayal Verma had already relinquished the charge of DPEO-Jind, therefore, he has written his designation below his signatures as 'Ex-DPEO.' It is argued that this proves that Supreme Court list is a fake list. I disagree with the submissions of A-3. In this regard, I would say that Darshan Dayal Verma (A-50) has himself stepped into the witness box as defence witness A-50/DW-1. In his testimony, he explained the circumstance in which the second award list was prepared in the year 2000, but, he testified that due to lapse of time he was unable to tell as to whether the Directorate List (Ext.PW15/B) of District Rewari is real or the Supreme Court List (Ext.PW39/A) is real. He admitted his signatures on both the lists. In cross examination by Sanjiv Kumar (A-3), he admitted that he had signed the award list made in December, 1999 for three days **in his capacity as DPEO-Rewari**. However, it appears that A-3 deliberately did not draw the attention of the witness to the words "Ex-DPEO" written under the signatures of Darshan Dayal Verma in the Supreme Court list. The only inference that can be drawn out is that had A-3 drawn the attention of A-50/DW-1 to this fact, Darshan Dayal Verma would have given a proper explanation demolishing the defence of Sanjiv Kumar. I may point out that Special Public Prosecutor had argued that it appears that Darshan Dayal

Verma signed the Supreme Court Lists after receiving the transfer orders to Sirsa and that out of his confusion about his capacity, he wrote Ex-DPEO under his signatures. Whatever may be the situation, it is enough to hold that A-3 cannot play hide & seek with the witness and the court and thereafter claim the benefit of doubt at the stage of final arguments. Therefore, on this ground the Supreme Court list of District Rewari cannot held to be a fake list. A-3 submits that the Directorate list does not bear the signatures of Sudha Sachdeva (A-49), the subsequent Chairperson of District Level Selection Committee. Let me discuss the direct evidence of PW-39 & PW-40 in this regard. Om Prakash (PW-39) was a teacher who had worked with Darshan Dayal Verma (A-50)-Chairperson for three days, Sudha Sachdeva (A-49)-subsequent Chairperson as well as with Saroj Sharma (A-51) & Tulsi Ram Bihagra (A-52)-members of the committee. He testified that he had prepared the Supreme Court list Ext.PW39/A in his own handwriting except the last three columns and that these sheets were written by him under the instructions of dealing hand Krishan Kumar and Phool Singh during the period 01.12.1999 to 17.12.1999 when the interviews were conducted by the members of the interview committee in district Rewari. He also testified that another award list Ext.PW15/B of district Rewari (i.e. the Directorate list) was also prepared by him in

September-2000 when he was asked to prepare this list again as it was stated by the dealing clerk and Superintendent that the earlier list was not proper. PW-40 Subhash Chand is another teacher of district Rewari. He testified that page no. 14,30,31 & 32 of the Directorate list Ext.PW15/B have been written by him except last three columns. In cross examination, he stated that the Directorate List does not bear the signatures of Sudha Sachdeva. In cross examination of PW-40, A-3 does not suggest that the Directorate list of District Rewari Ext.PW15/B was not prepared in the month of August/September 2000. Testimonies of both the witnesses proves beyond doubt that the Directorate Lists of District Rewari were prepared in August/September 2000 and the Supreme court lists of this district were prepared from 01.12.1999 to 17.12.1999. Accordingly, by leading direct evidence, the prosecution had proved that the Directorate list of district Rewari is a fake list and the Supreme Court list of Rewari is the genuine list.

Regarding lists of District Yamuna Nagar Sanjiv Kumar (A-3) has drawn my attention to the testimony of Urmil Sharma (A-61/DW-1). It is pertinent to note that Urmil Sharma (A-61) was the member of the District Level Selection Committee Yamuna Nagar and she stepped into the witness box as a defence witness. She testified that she conducted the interviews only for

three days and thereafter went on leave and in her place Jogender Lal (A-62) acted as a member of District Level Selection Committee. A-3 has drawn my attention to the testimony of Jogender Lal (A-62) who appeared as defence witness (A-62/DW-1). He testified that after conducting interviews for three days, Urmil Sharma proceeded on leave and thereafter he was appointed as member of the District Level Selection Committee in her place. He testified that the Supreme court list Ext.PW27/A of District Yamuna Nagar is a fake list because the signatures of Urmil Sharma and his own signatures are present on page 1 to 17, which was not possible because he had become the member of the interview board only when Urmil Sharma proceeded on leave. He testified that Directorate List Ext.PW15/J is therefore the genuine list because his signatures are not found on any page alongwith Urmil Sharma.

In cross examination by Special Public Prosecutor for CBI, this A-62/DW-1 stood firm on this stand but in cross examination he admitted that the first roll number of the Directorate List Ext.PW15/J is '80001' on page 28 of the list and that from page 28 to 40 of this list pertaining to the first three days on which interviews were conducted and when he was not the member of the District Level Selection Committee. He also admitted that his signatures are not present from page 28 to page 40 of the list and

on these pages only the signatures of Urmil Sharma (apart from the signatures of Rajender Pal Singh-A-59 and Sarwan Kumar Chawla-A-60) are present.

As per the submissions of A-3, Jogender Lal was pressurized to change his version in cross examination by Ashok Kumar, Advocate for A-59 which took place on 04.08.2012. In this cross examination, Jogender Lal (A-62/DW-1) stated that on last date he became puzzled and wrongly stated that Directorate List Ext.PW15/J was real list. He further testified that infact the list Ext.PW15/J is a fake list which was prepared in August or September-2000 and the Supreme Court List Ext.PW27/A is the actual list which was prepared in December-1999. He clarified that he was stating so on seeing the pattern of interview marks awarded in these lists. I find no force in the submissions of Sanjiv Kumar that A-62/DW-1 changed his version under any pressure. Infact, he was trying to identify the genuine list by co-relating with the fact that for first three days he was not the member of the interview committee and therefore his signatures should not be present on those days. In the Supreme Court list, the pages are not in seriatum of the roll numbers. The first roll number in this district starts from '80001'. When Special Public Prosecutor drew attention of A-62/DW-1 that his signatures are not available from page 28 to page 40 i.e. from Roll

no. 80001 to 80049, it appears that this witness became wiser and was able to form the correct opinion as to which was the genuine list and which one was fake. Therefore, the testimony of A-62/DW-1 that the Directorate List Ext.PW15/J is a fake list and the Supreme Court list Ext.PW27/A is the actual list is reliable and worthy of credence. In this regard, prosecution had examined Mehtab Singh (PW-27) to substantiate its case. This witness was posted as Assistant in the office of DPEO-Yamuna Nagar at the relevant time. He testified that all the 68 sheets of D-29(Ext.PW27/A) i.e. the Supreme Court list are in his handwriting except the last two columns and the same were prepared by him in December-1999 when the interviews were conducted by the interview committee of Yamuna Nagar. He also testified that another award list (D-11 Ext.PW15/J) of district Yamuna Nagar was also prepared by him sometime during August/September 2000 on the directions of Rajender Pal Singh (A-59). It is pertinent to note that Ext.PW15/J is the Directorate List. Sanjiv Kumar (A-3) has not controverted this evidence and therefore a conjoint evidence of PW-27 as well as of A-62/DW-1 proves that the Directorate List of district Yamuna Nagar is fake list prepared in the month of August/September-2000 whereas the Supreme Court list is the genuine list and was prepared in December-1999.

Regarding list of District Rohtak it is argued that the Supreme Court list is

blank. Had it been the original list, how it could have been the original list. A-3 has drawn my attention to D-12 i.e. Directorate List of this district where all the columns are filled up. I have seen the Supreme Court List of District Rohtak which is signed by the Chairperson as well as by the members of the District Level Selection Committee. Although all the columns are filled up but the interview marks and the grand total marks are not filled up. In such a situation, this court cannot reach to a conclusion that the Directorate list is genuine list, rather, the only conclusion which this court can draw is that the original list in which the interview marks and grand total were duly filled is missing. Therefore, the case of District Rohtak would fall under the category of District Panipat where the original list was not filed by Sanjiv Kumar in the Supreme Court of India or to the CBI.

Regarding list of District Sonapat it is argued that the Supreme Court List D-26 Ext.PW43/C is a carbon copy and therefore cannot be said to be the original one. I disagree with this submission. Only the particulars appear to be the carbon copy but the marks filled therein are in original handwriting. Moreover, the original signatures of the Chairperson and member of the interview committee are available on this list. Therefore, the Supreme Court list cannot be termed as fake list especially when the manner of

granting of interview marks is similar to the other Supreme Court lists. The Directorate list on the other hand is on the same pattern as the other Directorate Lists and accordingly held to be fake.

Regarding lists of District Faridabad it is argued by A-3 that Brij Mohan (PW-17) has misled this court and the words 'UP' are not written anywhere under his signatures. Brij Mohan was the member of the District Level Selection Committee. He was cited as accused as well as the prosecution witness. During the arguments on charge, prosecution left it to the court's wisdom as to whether Brij Mohan should be treated as a prosecution witness or as an accused. After hearing arguments on charge, this court discharged him and later on he was examined as PW-17. He testified that the Directorate List Ext.PW17/B (D-4) of District Faridabad is a fake list and that since he was pressurized to put his signatures on this fake list, he wrote 'UP' under his signatures by which he meant that he had signed under pressure. I have perused the Directorate List Ext.PW15/L (D-4) (it has also been given another Ext.PW17/B inadvertently). A perusal of the signatures of Brij Mohan at serial no. 3 of the Directorate List would show the presence of words 'UP' under his signatures. The word 'UP' would be more clearly visible under his signatures, if seen from a magnifying glass (which was available in this court) more clearly on first nine sheets. On the basis of the

words 'UP' with/under his signatures, he identified that D-4 i.e. Directorate List was a fake list prepared in September-2000. He also testified that D-22 (Ext.PW17/A) i.e. the Supreme Court list is the original list prepared from 01.12.1999 to 10.12.1999 when the interviews were conducted. None of the accused persons including A-3 has refuted his evidence in cross examination in this regard as to which is the fake list and which is the genuine list.

A-3 has challenged the genuineness of the Supreme Court list on the ground R.S. Kukreja (A-17) was the Chairman for first two days. He was however transferred and in his place Harbans Lal (A-16) was posted as Chairperson of the District Level Selection Committee. If that be so, how the signatures of R.S. Kukreja are not present on the interview list of first two days. I am of the opinion that A-3 had an opportunity to seek this explanation from Brij Mohan (PW-17) who was member of the District Level Selection Committee. Prosecution has tried to explain by stating that since R.S. Kukreja was transferred just after two days, his signatures might not have been procured on the interview sheets due to inadvertence. It is submitted that it must be kept in mind that it was for the first time in their life time that these officers were asked to perform the job of holding interviews etc. Without commenting on the submission of Special Public

Prosecutor, I would say that if an accused lets go an opportunity to challenge the testimony of a witness, natural consequence will follow. I have already stated that Sanjiv Kumar (A-3) did not controvert the version of PW-17 which states that the Directorate list is fake list and the Supreme Court List is the genuine list. Consequently, the stand of Sanjiv Kumar stands falsified and the prosecution version stands justified.

Regarding the lists of District Kaithal the reliance of Sanjiv Kumar (A-3) on the reply of Megh Nath Sharma infact goes against him. A-3 has submitted that when the interviews were being conducted in District Kaithal, one member of District Level Selection Committee-Kaithal namely Megh Nath Sharma refused to sign the award lists on the ground that these were prepared in contravention to the instructions issued by the department. My attention has been drawn to the fact that as per the instructions three lists were to be prepared and given to each member and each member would give his marks. Finally, the marks given to each candidate by such members would be calculated and entered in the final list. A-3 submits that a show cause notice was issued by the department to Megh Nath Sharma and in his reply to this show cause notice, Megh Nath Sharma had stated that he had given marks in the interview in code words 'A,B,C,D' and 'A' means '6.5', 'B' means '5.0', 'C' means '4.0', 'D' means '3.0'

and 'E' means '2.5' marks. If this is true, to my mind this pattern would support the marks given in the Supreme Court list of district Kaithal and not the Directorate lists. It is pertinent to note that these marks are being given by one member and if the other two members of the committee are also giving the marks in the same manner, on calculating marks of each candidate given by all the three members, no specific pattern of interview marks would emerge, which is the case in the Supreme Court list of district Kaithal. On the other hand, Directorate lists clearly exhibit a definite pattern which is favourable to one such of candidates and biased against rest of them.

Regarding the lists of district Jind Sanjiv Kumar (A-3) had heavily relied upon the defence witness examined by him namely Subhash Chander (A-3/DW-11). This defence witness testified that in September-2000 he was posted at Government High School, Pandu Pindara, District Jind. He testified that in the first week of September 2000, Sh. Ajit Singh Sangwan DPEO (A26) had called him to his office. Sh. Ajit Singh Sangwan told him that Government had directed them to make some fresh lists relating to JBT appointments, then, he put some lists in an envelope and put gum to close it and put some seals on it. He (i.e. Subhash Chand) wrote "District Primary Education Haryana" on this envelope on the instructions of Sh. Ajit Singh

Sangwan and he also wrote "District primary Education officer Jind" on the corner of this envelope. He testified that as per the directions of Sh. Ajit Singh Sangwan, he delivered that the said envelope to Sh. Vidya Dhar (A1) OSD to Chief Minister at his residence. He testified that the address of Sh. Vidya Dhar (A1) was given to him by Sh. Ajit Singh Sangwan. He identified accused Sh. Vidya Dhar (A1) in the court. A-3 has drawn my attention to the envelope **Ext.PW43/DA-1**. It is submitted that this is the envelope in which fake award list of the Supreme Court list of District Jind was lying in sealed cover and was handed over to the Investigating Officer before the Assistant Registrar (PW-43) of the Supreme Court. It is argued that the fact of the Jind list having been delivered in sealed condition has been mentioned in the memo prepared in the presence of Pushpa Ramdeo (PW-43) who was working as Assistant Registrar in the Supreme court of India at that time. A-3 has drawn my attention to the examination in chief of PW-43 wherein she testifies that details of the record handed over by A-3 to R.N. Azad-Addl. SP-CBI has been mentioned in the document **Ext.PW43/H**. **She also testified that bundle was opened in presence of Sanjiv Kumar and thereafter all the envelopes containing award lists were also opened in his presence and after opening the bundle and thereafter opening the envelope a list which is Ext.PW43/J were**

prepared. All the 15 envelopes containing the award lists after opening the same were signed by her as well as by A-3. My attention is also drawn to the cross examination of PW-43 by A-3 in which she admits that at Serial no. 15 of th is list, it is written 'One Envelope Containing Award Lists of JBT Teachers-Jind (these lists were in sealed cover)'. She further testifies that these sealed covers were opened and all 65 pages coming out of these sealed cover were signed by her in green ink. Sanjiv Kumar (A-3) has drawn my attention to the envelope Ext.PW43/DA-1 and submits that the words 'Award Lists from District Primary Education Officer' at point X and at the lower corner the words 'Distt. Primary Education Officer Jind' are written at point Z. It is further submitted that at point Y on this envelope 'Director Primary Education Haryana Chandigarh' was written in the middle of this envelope. It is submitted that all these writings are in the hand of A-3/DW-11 Subhash Chander. My attention is drawn to the fact that wax seals are placed in this envelope. It is argued that as per the testimony of A-3/DW-11 Subhash Chander he had the writings at points X,Y and Z on the envelope and had taken it from Ajit Singh Sangwan, DPEO-Jind and had delivered it to Vidya Dhar (A-1) at his residence. A-3 argues that with a view to prove his defence that Supreme Court lists are the fake lists, he kept this envelope in sealed cover, which was opened in presence of PW-43 in

Supreme Court. I have seen this envelope Ext.PW43/DA-1. The handwritings at points X,Y & Z are testified by Subhash Chander to have been written in his own handwriting. However, question is as to whether this witness is reliable at all? The cross examination of this witness by the prosecution has totally discredited this witness. He was not working under DPEO-Jind but still he goes to Chandigarh with the envelope purportedly containing a fake award list. Ajit Singh Sangwan-DPEO/Chairperson of District Level Selection Committee had prepared a fake award list and fool enough to tell him that he was putting a fresh award list of JBT candidates and put the list in the envelope in the presence of this witness. He has testified that CBI raided the office of DPEO-Jind in 2004. He wanted to make statement and for that purpose he went to CBI office Chandigarh and thereafter visited CBI office Delhi but CBI office did not entertain him. To my mind, if he was so desperate to state everything to the CBI and CBI was not entertaining him, he could have easily sent his version by sending a registered letter to the Director, CBI but he did not do so. Further, he testified in his examination-in-chief that he decided to contact Sanjiv Kumar and went to Supreme court of India and got the details of the lawyer of Sanjiv Kumar. Thereafter, he reached the residence of A-3 at Vasant Kunj, New Delhi met him and narrated the entire story. A-3/DW-11 testified that

A-3 was asked him to get everything typed neatly. Accordingly, he went to a typist in the market nearby and got the entire version typed and put his signatures and gave it to Sanjiv Kumar who told him that he would give it to CBI. He stated that he had got a photocopy of the statement with him and proved the said photocopy. I am surprised at the strenuous efforts being made by this witness for searching the lawyers of A-3 from other lawyers at Supreme Court and thereafter meeting Sanjiv Kumar and getting the entire version typed. This is highly unbelievable human conduct. I may point out that trustworthiness of this witness was assailed by the prosecution in cross examination pointing out that the print out Ext.A-3/DW-11/1 was sent by Sanjiv Kumar from the premises of one Virender, r/o H.No. 80001, Ground Floor Pocket-8, Sector-C, Vasant Kunj, New Delhi vide fax no. 01126995640, which is a place near to the residence of A-3. It is pertinent to note that this fax number is written on the typed statement Ext.A-3/DW-11/1 which clearly shows that the typed material was sent by fax by A-3 to this witness just a few days ago before he appeared in evidence before this court. If the evidence of this witness Subhash Chander examined by A-3 are read in detail, the entire story narrated by him is not digestible. The witness is an over smart person and is clearly testifying at the instance of Sanjiv Kumar. Even if it is presumed that on the envelope the handwriting is that of

Subhash Chander, still, it does not mean that in this envelope he had taken the Supreme Court list of District Jind from Ajit Singh Sangwan. The reason is that this witness could not have understood the difference between the Supreme Court List and the Directorate list. Therefore, the attempt of Sanjiv Kumar to prove that the list carried by Subhash Chand was in sealed cover till opened in Supreme Court surely fails. Even if it is presumed that this list in sealed cover was delivered to Vidya Dhar, it is natural that Vidya Dhar (A-1) would have opened it to see as to whether the list has been prepared as per planning. I repeat that as per A-3, Vidya Dhar was carrying out the directions of the Chief Minister in this scam. Therefore, there is no reason that Jind List delivered by Subhash Chand to A-1 would not be opened by A-1. Hence, the pleas that the seal of the envelope containing Jind list remained intact till having been opened in Supreme Court is not believable. Further, I would like to refer to the testimony of Buta Ram (PW-10). This is the person with whom Sanjiv Kumar had kept all the Supreme Court lists wrapped in a plastic bag with instructions to keep the bag safely. This bag remained with Buta Ram from August 2000 upto the year 2003 when he delivered the said bag to Sanjiv Kumar who later on presented the lists in the Supreme Court. A-3 has drawn my attention to the testimony of PW-10 Buta Ram in which he had admitted that Sanjiv

Kumar had stated to him that there is one yellow sealed bundle and it was not to be touched. Sanjiv Kumar argues that this bundle pertained to District Jind. I may point out here that as per the evidence of PW-10, it was Sanjiv Kumar who had given these lists to him. Hence, it is clear that A-3 was in a position to put all the lists or any list in the envelopes. In view of the trustworthy testimony of not only Sardar Singh, M.L. Gupta and Balram Yadav, but also, the evidence of PW-2 Ravi Dutt-Steno Typist and PW-5 Milap Singh-Clerk who were working in the office of DPEO-Jind, it stands proved as to how the original list of Jind was handed over for the purpose of obtaining its photocopy in the manner that last columns of interview and grand total marks are concealed. PW-2 & PW-5 have testified that they had prepared the Directorate List on the basis of such photocopy in which the interview marks and grand total was filled up by the Chairperson and the members of the committee. I may point out that A-3 did not cross examine PW-2 & PW-5 nor controverted their testimonies in respect of their version that the photocopy of the original was procured in Haryana Bhawan on 01.09.2000 and thereafter a second award list namely Directorate list of Jind was also prepared.

Now I take up the testimony of Dhup Singh (PW-14) who was the Dy. Superintendent in the office of DPEO-Jind on the relevant time. He

testified that Ext.PW2/1 (D-23 i.e. the Supreme Court list of Jind) was the genuine/original list because in token of checking the academic qualification, marks etc., he had put his signatures at point D on all the 65 sheets. He also testified that Ext.PW2/2 (D-5 i.e. Directorate list of district Jind) was prepared by Ravi Dutt and Milap Singh and when Ajit Singh Sangwan DPEO-Jind (A-26) asked him (i.e. PW-14) to sign it, he refused to sign the same unless the original list is shown to him. This witness was cross examined by Sanjiv Kumar (A-3) who did not assail his testimony in this respect. In view of uncontroverted testimonies of PW-2, PW-5 & PW-14 and in view of the discredited evidence of Subhash Chander (A-3/DW-11), it stands proved that the version of A-3 that the Supreme Court lists was prepared by Ajit Singh Sangwan in the year 2000 and that the Directorate list is the genuine list stands falsified.

Regarding lists of district Mahendergarh (Narnaul) I would say that if the award list of C&V Teachers i.e. Ext.PW24/L (D-60 Vol. I to IV) has the same pattern as the Directorate Lists, I have no hesitation in stating that the same fraud (as in the interviews of the JBT teachers) has happened in the selections of C&V teachers which were being conducted almost simultaneously alongwith the interviews of JBT teachers. It is very relevant to mention here that the submission of A-3 (that the award list of C&V

teachers is genuine) is infact contrary to his submissions which he made in the Writ Petition no. 93/2003 filed by him in the Supreme Court of India. He specifically mentioned in this petition that similar fraud has also taken place in the appointments of 3000 posts of Secondary School teachers. Therefore, the award list Ext.PW24/L pertaining to the interviews of C&V teachers, supports his averments which he made in his Writ Petition. Hence, a totally opposite stand taken by A-3 before this court now stands falsified.

Regarding the arguments of A-3 in respect of the list of District Bhiwani

I would say that this is also superficial. As per his own case, the lists were changed at the instructions of Om Prakash Chautala and Vidya Dhar-OSD to Chief Minister was actively executing the same. Therefore, it is not necessary that wishes of Vidya Dhar (A-1) could have been of much importance before overriding wish of the Chief Minister. Nevertheless, all the relatives of A-1 though were not highly favoured in Directorate Lists but were put in the higher bracket of BC-A candidates as all of them had got '7' marks each (as discussed in earlier part of this judgment).

Now I refer to the testimony of Tara Chand (PW-30) who was Dy. Superintendent in the office of DPEO-Bhiwani during the relevant period. He identified the Supreme Court list of Bhiwani Ext.PW30/A (D-25) as the original list which was prepared in the month of December-1999. He

testified that the Directorate List Ext.PW15/M was a fake list because it does not bear his signatures anywhere, whereas the original Supreme Court list Ext.PW30/A signed by him on each of the 47 pages at point A as he had got all the pages typed in token of checking the particulars i.e. Date of Birth, marks etc. from the certificates of the candidates. Interestingly, in cross examination of this witness, A-3 has never controverted the testimony of PW-30 in respect of the Supreme Court List being the genuine list and Directorate list being the fake one. In view of this clear cut evidence, the Supreme Court list of District Bhiwani stands proved to be a genuine one and the Directorate list is proved to be a fake list prepared in the year 2000.

Regarding other districts: In view of overwhelming evidence discussed above, it would be worthwhile to compare the pattern of interview marks of the Directorate list of Panipat and part Directorate list of Kurukshetra (prepared by M.L. Kalra A-32) and the Directorate list of District Rohtak with the Directorate lists of other districts mentioned above. A bare perusal and comparison of these lists show that Directorate lists of districts Panipat, Rohtak and part Directorate lists of District Kurukshetra have the same pattern of interview marks which appears in the remaining districts. Therefore, the plea of Daya Saini (A-40), Ram Singh (A-41) (Chairman and Member of Panipat Selection Committee) and the plea of M.L. Kalra (A-32)

that they had signed only one list i.e. Directorate list and the same is the genuine list prepared in December-1999 stands falsified and it stands proved beyond doubt that all the Directorate lists were prepared in August/September-2000 and are fake lists.

93. Whether the authorship of both the sets of the award lists stands proved?

I would take up this issue district wise.

(I) Jind

PW2 Ravi Dutt, PW5 Milap Singh and PW14 Dhup Singh, the officials in the office of District Primary Education, Jind have identified the signatures of Ajit Singh Sangwan (A26) (DPEO & Chairman), Smt. Ram Kaur (A27) and Mahavir Singh (A28) on both the lists.

(II) Faridabad

PW17 Brij Mohan has identified the signatures of Harbans Lal (A16) and Udal Prasad (A18), apart from his own signatures on both the lists. He has also identified the signatures of R. S. Kukreja (A17) and Harbans Lal (A18) and his own signatures on the Directorate list.

(III) Panchkula

PW18 Pradeep Kumar an official in the office of District Panchkula has identified the signatures of Sheesh Pal Singh (A43)

(Chairman/DPEO), Smt. Rekha Sharma (A44) and Smt. Raksha Jindal (A45) as the members on both the award lists.

(IV) Kaithal

PW21 Smt. Santosh Saluja and PW24 Chand Ram Sharma, the officials in the office of DPEO have identified the signatures of Dilbagh Singh (A35) (Chairman/DPEO) on both the lists. PW21 also identifies the signatures of Ram Kumr (A36), the member on both the lists.

(V) Karnal

PW28 Dheeraj Kumar and PW32 Raj Arora have identified the signatures of N. S. Ruhil (A29) (DPEO/Chairperson), K. L. Narang (A30) and Smt. Usha Rani (A31) on both the lists.

(VI) Yamuna Nagar

PW27 Mehtab Singh an Assistant in the office of DPEO Yamuna Nagar has identified the signatures of Rajender Pal Singh (A59) (Chairman/DPEO), Smt. Urmil Sharma (A61), Jogender Lal (A62) and Sarwan Kumar Chawla (A60) on both the sets of lists.

(VII) Bhiwani

PW30 Tara Chand, the Deputy Superintendent in the office of DPEO Bhiwani, has identified the signatures of Brahma Nand (A9) (Chairman/DPEO), Smt. Vinod Kumari (A10) and Sawan Lal (A12) on both

the lists. However he was unable to identify the signatures of **Maman Chand (A11)**.

(VIII) Ambala

PW12 Prem Nath Bhatia, Assistant in the office of DPEO Ambala, identified the signatures of Smt. Prem Behl (A6) and Smt Krishna Gupta (A8) on both the lists. He is silent regarding the signatures of Smt. Shashi Malhotra (A7).

(IX) Jhajjar

The prosecution has relied upon the report of GEQD (PW64 M. C. Joshi) to prove that both the lists have been signed by Sher Singh (A23), Anar Singh (A24), Smt. Kailash Kaushik (A25). Further Sher Singh (A23) had examined himself in defence as A23/DW1, who has also proved that the aforesaid accused persons had signed both the lists.

(X) Rewari

PW39 Om Prakash has testified that D. D. Verma (A50) was the Chairperson of the Selection Committee. Tulsi Ram Bihagra (A50) and Smt. Saroj Sharma (A51) were its members. After some days, D. D. Verma was transferred and Smt. Sudha Sachdeva (A49) functioned as the Chairperson. However he was unable to identify their signatures. However the prosecution is relying upon the evidence of PW64 M. C. Joshi, the hand

writing expert and his report, to prove that the both lists were signed by the aforesaid persons.

(XI) Sonapat

Lal Singh (PW44), a clerk from the office of DPEO Sonapat, identified the signatures of Rajender Singh (A56) (the Chairman/DPEO) and its members namely Dalip Kumar (A57) and Smt. Kamla Devi (A58 since expired) on both the lists.

(XII) Mahendergarh/Narnaul

Om Prakash Sharma (PW48), a clerk in the office of DPEO Narnaul, testified that Pushkar Mal Verma (A37) was the Chairman of the District Level Selection Committee of this district. He could not tell as to whether Durga Dutt Pradhan (A38) and Bani Singh (A39) were its members. He also could not identify their signatures on any of the lists. Therefore the prosecution is relying upon the report of the hand writing expert (PW64) to prove their signatures on the two sets of lists.

Remaining Districts

The prosecution is relying upon the evidence of PW64 M. C. Joshi, the hand writing expert, for proving that the Directorate lists and Supreme Court lists were signed by the respective Chairpersons and the members of the said districts, who have been impleaded as accused persons herein.

94. Evidentiary value of a hand writing expert

It is argued by Ld. Counsels for Pushkar Mal Verma (A37), Durga Dutt Pradhan (A38) and Bani Singh (A39) (who have been alleged to have signed both the lists as chairperson and the members of the District Level Selection Committee – Mahendergarh/Narnaul) that the evidence of a hand writing expert is not substantive evidence and such evidence can be used to corroborate some items of substantive evidence only, which are otherwise on record. Ld. Counsels have referred to **Musheer Khan Vs State of Madhya Pradesh 2010(1) RCR (Criminal) 817** delivered by the Division Bench of the Supreme Court of India in their support. I have carefully perused this case law and I am of the opinion that in this case, the Supreme Court was dealing with the circumstance of availability of the finger prints of the accused on a scooter and the car. The Supreme Court held that this simple evidence of availability of the finger prints of the accused on these vehicles cannot form a substantial evidence against the person against the appellant accused of the offence of murder. Therefore in this case law, no proposition of law has been laid down that expert's evidence can be used only as corroboration and not as substantive piece of evidence. It must be kept in mind that when a piece of evidence directly connects a person with the offence, it becomes substantial piece of evidence. If not, either it will

lose relevance or at the most, would serve the purpose of corroboration. For example, presence of finger prints of an accused on the handle of a knife used for stabbing and murdering a person would surely form a definitely and substantial piece of evidence against such accused, if the said knife is found stuck in the dead body or lying near it. On the other hand, availability of such finger prints on the handle of a knife found elsewhere can only serve the purpose of corroboration.

In the present case before this court, the hand writing expert's evidence directly proves that signatures on both the lists had been written by the particular accused persons in this court on the award lists. Therefore hand writing expert's evidence is a substantive piece of evidence in this case.

It is further argued by Learned Counsels for the accused persons that it would be highly unsafe to rely upon the reports of hand writing expert. I would say here that it will depend upon the appreciation of report/opinion of hand writing expert and other attending circumstances to reach to a just conclusion.

Section 45 of the Indian Evidence Act lay down that when the court has to form an opinion as to the identity of hand writing or finger impressions, the opinions upon that point of the persons expert in that science are **relevant facts**. If the two hand writings match with each other,

this itself is an evidence as per the Indian Evidence act. To say it differently, the matching of two hand writings is itself a substantial evidence u/s 45 of Indian Evidence Act and the opinion of the hand writing expert is sought only to facilitate the court to form an opinion on this point. Therefore, to say that conviction can be or cannot be based solely upon the report of hand writing expert would be misleading. The appropriate interpretation of Section 45 of Indian Evidence Act is that court is competent to form its own opinion on the point of identity of hand writing and for that purpose the court may call for the report of a hand writing expert. Therefore, the relevant fact before this court is the matching or non matching of the hand writing of an accused with the questioned hand writing. If the hand writings match, there cannot be any hitch in convicting the accused even if further corroborative evidence is not available. I quote from the judgment dated 5.7.2011 passed by the division Bench of Hon'ble Mr. Justice S. Ravindra Bhatt and Hon'ble Mr. Justice G. P. Mittal in **Jaipal Vs State Criminal appeal No. 137/98 and Rajendra Vs State Criminal Appeal No. 181/98** as under :

“it is true that except the handwriting Expert's report Ext.PW4/A there is no corroboration that the ransom letter Ext.PW12/A was in the handwriting of Appellant Jaipal. The question was dealt in detail by the Supreme Court in **Murari Lal v. State of M. P., AIR 1980 SC 531.**

The Court observed that handwriting expert is not an accomplice and there is no justification for condemning his opinion evidence. It was held that if the Court is convinced from the report of an expert that the questioned handwriting was of the accused, there is no difficulty in relying upon the expert's opinion **without any corroboration.**”

It is pertinent to note that High Court of Delhi had relied upon **Murari Lal v. State of M.P., AIR 1980 SC 531** wherein Hon'ble Supreme Court held that there was no rule of law nor any rule of prudence that the evidence of handwriting expert must not be acted upon, unless substantially corroborated. I would like to quote from this judgment extensively as under:

“An expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion on a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witness-the quality of credibility or incredibility being one which an expert shares with all other witness-, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of

identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.

(para 4)

Expert testimony is made relevant by S.45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' in questions as to identity of handwriting is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to S. 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the Court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (S.3) tells that 'A fact is said to be provided when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.' Further, under S. 144 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that S. 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

(Para 6)

There is no rule of law, nor any rule of prudence which has crystalised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach should be one of caution. Reasons for the opinion must be carefully probed and examined. All other

relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence through a doubt, the uncorroborated testimony of a handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. (Cases law discussed).

(Para 11)

*Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. **Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative text book and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence.***

(Para 12)

In view of the above stated law, I am of the opinion that when a case is being pressed by the prosecution solely on the basis of handwriting expert, the court should be very cautious and the reasons for the expert opinion must be carefully examined. In case where reasons for opinion are convincing and there is no reliable evidence throwing a doubt upon it, the testimony of handwriting expert may be accepted.

95. **Whether the specimen signatures taken by the police without**

permission of the Magistrate are admissible in evidence?

Sh. N.K. Sharma, Adv. and other Defence Counsels have also argued that the specimen signatures of the accused persons were not taken with the permission of the Magistrate and therefore the same are not admissible in evidence. It is argued that as soon as the fact of taking of specimen signatures is taken out from the domain of this trial, the opinion of the expert witness would be rendered valueless.

I disagree with this submission. The Supreme Court of India, in **State of Bombay V. Kathi Kalu Oghad & Ors. AIR 1961 Supreme Court 1808**, considered this issue in detail and held that no permission of the Magistrate was required before taking the specimen hand writing of an accused during investigation. Relying upon the ratio of **Kathi Kalu** case, Supreme Court of India in a recent judgement **Ravinder Kumar Pal @ Dara Singh Vs. Republic of India AIR 2011 SC 1436**, where a question was raised about the admissibility of the specimen signatures of the accused taken during investigation without permission of the Magistrate, has held that taking of specimen signatures/writings of accused for examination by expert during investigation, without permission of the Magistrate, is proper and report of expert based on such signatures/writings can be used as evidence against the accused. Relevant portion of para no. 35 of this judgment contain the

rival submission put before it, which is reproduced as under :

*“Another question which we have to consider is whether the Police (CBI) had the power under the CrPC to take specimen signature and writing of A3 for examination by the expert. It was pointed out that during investigation, even the Magistrate cannot direct the accused to give his specimen signature on the asking of the police and only in the amendment of the CrPC in 2005, power has been given to the Magistrate to direct any person including the accused to give his specimen signature for the purpose of investigation. Hence, it was pointed out that taking of his signature/writings being per se illegal the report of the expert cannot be used as evidence against him. To meet the above claim, learned Addl. Solicitor General heavily relied on a 11-Judge Bench decision of this court in the **State of Bombay V. Kathi Kalu Oghad and Ors. (1962) 3 SCR 10: AIR 1961 SC 1808**. This larger Bench was constituted in order to re-examine some of the propositions of law laid down by this Court in the case of **M. P. Sharma & Ors. Vs. Satish Chandra, District Magistrate, Delhi and Ors., (1954) SCR 1077: (AIR 1954 SC 300)**.”*

The Supreme Court of India then upheld the view of Orisa High Court which had held that police had power to take specimen signatures of accused during investigation. Thus, I find no illegality in taking of specimen signatures of the accused persons by the CBI during investigation. Further, the law does not require any corroboration to the expert's opinion. However, it is the duty of the court to apply its own mind and form an opinion about the correctness of the expert's report. The expert's report is **Ext.PW64/B** and the reasons have been proved as **Ext.PW64/C**. The report

as well as the reasons are compiled in D-150. A perusal of the reasons would show that handwriting expert namely M.C. Joshi (PW-64) has prepared this report in a very scientific manner. While giving his reasons, he has also placed the photographs of a few questioned signatures, specimen signatures and some admitted signatures in three columns. This method of placing the photographs of the signatures in the report itself makes it very easy for the court to form an opinion. The detailed reasons have been given by the expert in his report and I appreciate the manner in which the entire work has been done in a thoroughly professional and scientific manner. Since A-37, A-38 & A-39 have denied their specimen signatures on both the lists, therefore, I will consider the expert's report in respect of these accused persons.

The specimen signatures of Pushkar Mal Verma (A-37) are S-99 & S-100. The specimen signatures of Durga Dutt Pradhan (A-38) are S-126 to S-128. The specimen signatures of Bani Singh (A-39) are S-129 to S-131. The questioned signatures of Pushkar Mal Verma (A-37) on the Directorate Lists are Q-6926, Q-6935 and Q-7196 have been taken as example for comparison. In the other column, the specimen signatures of Pushkar Mal Verma at S-99 & S-100 have been placed and it has been opined that there is no diversion between the questioned and the specimen signatures.

The reasons given by the expert in respect of handwriting of Pushkar Mal Verma are from page 51 to 53. Perusal of the reasons would show that expert has compared all the questioned signatures available on Supreme Court List and all the questioned signatures on the Directorate Lists and compared the same with the specimen signatures. After perusing the opinion especially the peculiar manner of execution of letter 'P' and the formation of bold letter appearing as 'M' and garlanded movement in the medial stroke and the final character appearing as letter 'r' in both the questioned signatures and the specimen signatures are matching. The expert has juxtaposed the questioned signatures Q-6926, Q-6923 & Q-7196 with the specimen signatures Q-100 & Q-99 as an illustration at page 52 of his report (D-150). I have also perused the questioned signatures and the specimen signatures on the Supreme Court as well as the Directorate lists and I fully agree that the signatures stated to be of Pushkar Mal Verma on both the lists tally with his specimen signatures S-99 to S-101.

The reasons given by the expert from page 66 to page 68 on Ext.PW64/C. The specimen signatures (D-150) of Durga Dutt Pradhan (A-38) are from S-126 to S-128. For demonstrative purpose, the expert has juxtaposed the questioned signatures i.e. Q-7197, Q-7125 & Q-6936 with his specimen signatures S-126. The expert has given detailed reasons in

support of his opinion that the questioned signatures and the specimen signatures match with each other. The special feature of these signatures is the peculiar manner of execution of letter appearing as figure '8' and the special feature of both type of signatures is the execution of letter 'd' & letter 'P'.

I have perused all the questioned signatures as well as the specimen signatures stated to be put by Durga Dutt Pradhan and I am left in no doubt that the same are of one and the same person.

The reasons in respect of Bani Singh (A-39) have been given from page 68 to page 70 Ext.PW64/C. The specimen signatures of this accused are S-129 to S-131. The peculiarity of these signatures is the execution of letter 'B' with retraced nature of its vertical staff in the commencing part and the extent of curvature in the lower body and bold twisting movement of its finishing stroke of prominent loop followed with downward direction and a crossing at the end. The juxtaposed chart of Q-7198, Q-7126 & Q-6937 with S-129 and S-130 is self explanatory and I am left in no doubt that the questioned signatures and the specimen signatures stated to be of Bani Singh have been signed one and the same person.

All these three accused persons have strongly assailed the testimony of Insp. NNS Asthana (PW-67) on the ground that he did not recognize these

accused persons in the court and therefore it cannot be presumed that the specimen handwriting of A-37, A-38 & A-39 was taken by him. These accused persons have further assailed the testimony of PW-67 NNS Asthana-Inspector, CBI on the ground that the specimen sheets of these accused persons is shown to be witnessed by Malkhan Singh and Surender-officials of the office of SDEO-Mahendergarh but none of these persons have been examined by the prosecution. It is argued that CBI did not get any admitted signatures of these accused persons from the official records. It is further argued that PW-67 stated that location of the office of District Primary Education Officer was at Mahendergarh whereas infact it is situated at Narnaul. It is argued that it is not explained by this witness as to how he got the addresses of the accused persons. It is further argued that he did not record the statement of any person or the witnesses in whose presence the specimen signatures were taken. Furthermore, it is argued that PW-67 was never empowered to act as the investigating officer and hence PW-67 has impersonated as the investigating officer of the case and accordingly the papers proved by PW-67 should be treated to be forged.

The specimen signatures of the accused persons and the witnesses are placed in **Ext.PW64/E** which is in two volumes. In first volume, the specimen signatures (S-99 to S-101) of Pushkar Mal Verma are available at

page 101 to 103. In second volume, the specimen signatures S-126 and S-127 of Durga Dutt Pradhan are placed on page 26 & 27. The specimen signatures of Bani Singh (which are S-130 & S-131) are at page 30 and 31 of Vol. II of **Ext.PW64/E**. These accused persons have been witnesses by the two officials of the office of SDEO-Mahendergarh each. Therefore, it stands ensured that it were these accused persons themselves who had given specimen signatures. I may point out that the names, parentage and addresses of these accused persons are written on the top of the specimen sheets. However, to be sure about the identity of the persons who had written the specimen signatures as well as the questioned signatures on Supreme Court and Directorate Lists, I thought it appropriate to further go into this issue, lest, there be any injustice to these accused persons. The signatures of all the accused persons are available on their statements u/s 313 CrPC. The signatures of Durga Dutt Pradhan (A-38) on each page of his statement u/s 313 CrPC is unmistakably the same signatures as available on the specimen sheets as well as on the Supreme Court lists and Directorate Lists. The signatures of Pushkar Mal Verma and Bani Singh on their statements u/s 313 CrPC are available, but, they have put full signatures whereas on the specimen sheets and award lists, the short signatures are available. However, the formation of word 'P' & 'M'

unmistakably the same in full signatures of Pushkar Mal Verma, if compared with the specimen signatures and signatures on award lists. Similarly, the formation of 'B' in the full signatures of Bani Singh at his statement u/s 313 CrPC is similar to the specimen signatures and signatures on award lists. Hence, I find no substance in the statements of these accused persons. Rather, their defence that they had not signed these award lists stands proved to be a false defence which will have its own consequences to be discussed later on. The report of handwriting expert must be read in the context of the PW-48 Om Prakash, clerk in the office of DPEO-Narnaul who has testified that Pushkar Mal Verma was the Chairman at the time of interviews. The above discussion proves that his signatures are present on both the lists.

Bani Singh (A-39): It is argued by Sh. Sudershan Kumar, Adv. for Bani Singh that Om Prakash Verma (PW-48) has testified that in December-1999 he was working as a Clerk in the office of DPEO-Narnaul and Bani Singh was working as Principal in Senior Secondary School-Madhogarh but neither he has testified that Bani Singh was the member of District Level Selection Committee nor he has identified the signatures of Bani Singh on the said lists. My attention has also been drawn to D-40 Vol. II page 265 in which a note has been prepared mentioning the names of the Chairpersons

and the member of the District Level Selection Committees. The said note is **Ext.PW31/DN**. It is argued on behalf of A-39 that in front of the District Mahendergarh, the name of Pushkar Mal Verma has been mentioned as the Chairperson whereas the names of Durga Dutt Pradhan and Jai Dayal has been written as members. Therefore, it is argued that he was never a member of the District Level Selection Committee. I have considered his submissions and I would mention here that during the period when the interviews were conducted, there were many changes in the constitution of the District Level Selection Committees. Some persons were changed before conducting the interviews, like Daya Saini was appointed as Chairperson of District Level Selection Committee-Paipat prior to the interviews whereas Darshan Dayal Verma (Chairman Rewari) and M.L. Kalra (Chairman Kurukshetra) were transferred during the interviews, therefore, the exact evidence as to who had conducted the interviews, is the signatures put by such persons on such lists. I have already stated that the signatures of Bani Singh were very much present on the Supreme Court list and the Directorate list of district Mahendergarh. Here, I would point out that during the cross examination (dt. 13.10.2011) of PW-31 Sardar Singh, his attention was drawn to the note Ext.PW31/DN which shows the name of **Jai Dayal** as the member of District Level Selection Committee-Mahendergarh,

but, he pointed out page 19 of D-106 (which is **Ext.PW31/DO**) which specifically shows Pushkar Mal Verma as the Chairperson of District Level Selection Committee and Durga Dutt and Bani Singh as the Members of the District Level Selection Committee. In this document, the name of Jai Dayal has not been mentioned. When this witness was cross examined by Sudershan Kumar, Adv. for Bani Singh (A-39), Bani Singh did not controvert this document nor suggested it to be a fake or manipulated insertion. Rather, it has been suggested that **“accused Bani Singh was pressurized by Director to become member of selection committee-Mahendergarh.”** This suggestion of the accused is sufficient corroboration to the prosecution case that Bani Singh (A-39) was indeed a member of the District Level Selection Committee. His change of stance later on would be of no help to him. Rather, his taking a U-turn on this issue leads me to the inference that not only he was the member of the District Level Selection committee and had signed the Supreme Court list, but, also had intentionally cooperated in creation of the second fake award list (i.e. the Directorate List). Further, it is his duty u/s 106 of the Indian Evidence Act to explain as to why his signatures are available on these two lists and under what circumstances. I may add here that he did not put any suggestion to the investigating officer that he had told him about the fact that he was not the member of the

District Level Selection Committee, nor he suggests that during investigation, he told the investigating officer that signatures on those award lists do not pertain to him. True, PW-48 Om Prakash Verma had not identified his signatures, but, in cross examination, Sh. Sudershan Kumar, Adv. for Bani Singh (A-39) put a specific suggestion that he (i.e. PW48) and accused Pushkar Mal Verma had forged the signatures of Bani Singh on these award lists. No reason has been assigned by Bani Singh as to why Pushkar Mal Verma would forge the signatures of Bani Singh on both the lists. It must be kept in mind that when Supreme Court list was being prepared, no one had any cause to put forged signatures of any other persons. Therefore, it is clear that A-39 is making all types of frivolous defences during the trial. In cross examination, PW-67 has specifically testified that he had taken the signatures of Bani Singh in presence of Malkhan Singh and one S.K. Sharma- the officials in the office of SDEO- Mahendergarh. Bani Singh could have called any of these witnesses in his defence to controvert the evidence of PW-67, which he did not. In such circumstance, Bani Singh cannot claim innocence. Every mistake of the prosecution and the investigation is not fatal to the prosecution case. I may point out that it is not the case of Bani Singh that at any stage of investigation he told the investigating officer that he was not a member of

the District Level Selection Committee and did not conduct such interviews. At no stage of the trial he showed inclination to produce the official record as to where he was working on the dates when the interviews had taken place. His signatures on the award lists is a sure evidence of his being the party to the makers of the Supreme Court lists as well as the Directorate lists of Mahendergarh.

Remaining Chairpersons & Members.

Apart from the official witnesses already discussed in the judgment, the prosecution has relied upon the hand writings expert's report. As per the report of hand writing expert, the questioned signatures on the Directorate and Supreme Court lists of the respective Chairperson and the Members tally with their specimen signatures. Specimen signatures of most of the Chairpersons and the Members of the District Level Selection Committees were taken by the Investigating Officer R. N. Azad (PW63). The specimen signatures of remaining Chairpersons and Members were taken by Inspector N. N. S. Asthana (PW67). The positive evidence of the Investigating Officer (PW63) and PW67 regarding having taken the specimen signatures cannot be disbelieved on the basis of minor technical points raised by a few accused persons. I may point out that PW63 as well as PW67 are public servants and they are presumed to have conducted their

official business in proper manner. The perusal of the specimen sheets of all these accused persons in the two volumes of **Ex.PW64/E** would show that these CBI officials have taken the specimen signatures in presence of the independent witnesses, which substantiate the correctness that the specimen signatures of those persons have been taken, whose names and other particulars have been written in the upper portion of the specimen sheets. None of the accused persons had ventured to call any such of witnesses in their defence to controvert the prosecution case. None of the accused persons brought any expert witness in their defence to show that the specimen signatures available in **Ex.PW64/E** have not been written by them.

Sh. N. K. Sharma, adv. for accused A10, A21 and A22 has argued that it was the duty of the Investigating Officer to specify as to which sheet D-150 pertains to which accused. Ld. Counsel has drawn my attention to the fact that in examination in chief, PW63 did not testify that he had taken specimen signatures of any of the accused persons. I agree with the submissions of Sh. N. K. Sharma, adv. but I would say that it appears to be an inadvertence mistake by the Investigating Officer or the prosecution. However in his cross examination dated 15.2.2012 by Sh. Sudarshan Kumar, adv. for accused Bani Singh (A39), he testified that the specimen signatures

had been taken by him and the accused persons had voluntarily given their specimen signatures to him, which were sent to GEQD, Shimla. On 4.4.2012 the cross examination of PW63 was complete, however accused persons made a request that they wanted to further cross examine the Investigating Officer Sh. R. N. Azad (PW63) on the limited points of taking of specimen signatures. This request of the accused persons was allowed and the cross examination of PW-63 was deferred for 10.04.2012. However on 10.4.2012, none of the accused persons cross examined the Investigating Officer on this point and therefore the fact that accused persons had given his specimen signatures voluntarily remains unrebutted and accordingly has to be accepted.

Here, I would also discuss as to whether the signatures of accused Maman Chand Sharma (A-11) are available on both the lists or not. He was the Chairperson of District Level Selection Committee-Bhiwani. PW-30 Tara Chand-the Dy. Superintendent in the office of DPEO-Bhiwani. He could identify the signatures of Maman Chand Sharma on the Directorate List **Ext.PW15/M (D-7)**. However, the prosecution could not find the signatures of Maman Chand on the Supreme Court List **Ext.PW30/A (D-25)**. However, as per the handwriting expert's report (reasons) **Ext.PW64/C (D-150)**, it stands fortified that the signatures of Maman Chand are

available on the Directorate List. Hence, his signatures on the Directorate List stands proved, but, his signatures are not available on the Supreme Court List. I have already held that Directorate List is the fake list.

I have carefully perused the questioned signatures of all the Chairpersons & Members i.e. A-6 to A-62 on both the lists, their specimen signatures and the report of the hand writing expert (PW64). I have already stated that the report had been prepared in a most scientific and methodical manner and I fully agree with this report, which proves that the questioned signatures on the aforesaid lists pertain to A6 to A62.

Smt. Sudha Sachdeva (A-49)

It is argued by Sh. S. C. Chawla, adv. for accused Smt. Sudha Sachdeva (A-49) that the Supreme Court list of District Rewari is the genuine list and the Directorate list is the fake list. However, it is submitted that smt. Sudha Sachdeva refused to sign the Directorate list and therefore she was put under suspension. My attention has been drawn to the statement under Section 313 CrPC of this accused and the testimony of A-49/DW-1 and submits that due to her refusal to sign the Directorate List, she remained under suspension thereafter. Sh. S. C. Chawla, adv. also assailed the testimony of co-accused Darshan Dayal Verma (A-50), who examined himself in defence. Darshan Dayal Verma was the Chairperson of

the District Level Selection Committee-Rewari and along with the other members conducted the interviews in December 1999. After three days, he was transferred to Sirsa and thereafter Smt. Sudha Sachdeva was appointed as the Chairperson of the Selection Committee, Rewari and she continued with the interviews in December 1999. In statement under Section 313 CrPC, she states that the second award list i.e. Directorate list was prepared in the year 2000 but she refused to sign the same. She also stated that she had given an affidavit **Ex.PW46/40** under pressure. In this affidavit Smt. Sudha Sachdeva had stated that she had prepared the second award list at the instance of Sanjiv Kumar (A3). The issue of affidavits would be taken up by me later on. First I would taken up the defence witness examined by her. She had examined Sh. Desh Raj Saini (A49/DW1), the Assistant in the Office of Directorate Secondary Education Haryana. This witness produced her service record **Ex.A49/DA**, which shows that she was suspended vide order dated 27.10.2004. However this does not show as to why she was suspended. Therefore its evidence is of no help to Smt. Sudha Sachdeva.

Now I take up the testimony of accused Darshan Dayal Verma (A50), he testified that in December 1999, he was posted as DPEO, Rewari and was Chairman of District Level Selection Committee consisting of the members namely Smt. Saroj Sharma (A51) and Tulsi Ram Bihagra (A52).

He testified that he had conducted the interviews of JBT teachers from 1.12.1999 to 3.12.1999 i.e. only for three days. Thereafter he was transferred to Chandigarh as Deputy Director in the office of Director Secondary Education, Haryana. He testified that in the month of September 2000, he was posted as Principal in District Institute of Education and Training (DIET) in Ding District Sirsa, Haryana. In compliance of a message received from Shadi Lal Kapoor PS to Sanjiv Kaushal, Additional Principal Secretary to CM, he reached Haryana Bhawan, New Delhi on 1.9.2000 at about 2:00 pm. There he met Sanjiv Kumar (A3) and Sher Singh Badshami (A-2) who told him that necessary instructions have been given to DPEO regarding the preparation of the second set of award list. He testified that he was threatened to cooperate in this work by A2 and A3. He testified that from Haryana Bhawan, New Delhi he went back to his home town Sirsa. Later, on receiving a telephonic message, he went to Rewari, where Smt. Sudha Sachdeva, the then DPEO Rewari, dictated the interview and grand total marks to him (i.e. Darshan Dayal Verma). This accused testified that he fill up the marks as dictated by Smt. Sudha Sachdeva and handed over the list after getting it signed by Smt. Saroj Sharma and Tulsi Ram Bihagra, who were also present there. He testified that he had put his signatures only for three days on the second set of list. He was thoroughly cross

examined by Sh. S. C. Chawla, adv. for A49 but his testimony remained unimpeached. The evidence of A-50/DW-1 becomes more credit- worthy because his version was not controverted in cross examination by the other members namely Smt. Saroj Sharma (A51) and Tulsi Ram (A52). I have found this accused (i.e. A50/DW1) to be truthful witness. He has not tried to shift his guilt upon Smt. Sudha Sachdeva (A49) rather he has tarred himself with the same brush. He fully explains his role and has stated that as to how the entire event took place. It appears that Smt. Sudha Sachdeva was clever enough to have avoided signing the Directorate list. Therefore, although she cannot be convicted for substantial offence of forgery but since she got prepared the Directorate list and got the signatures of the other members on it, she would be responsible for being participant in the criminal conspiracy of this offence. I may add here that it was easy for her to avoid the detection of not signing the list because on first three pages, the signatures of the Chairman i.e. A50 were present giving an impression that signatures of all the concerned having been duly taken on the award lists.

Smt. Raksha Jindal

Smt. Raksha Jindal is stated to be the member of the District Level Selection Committee, Panchkula. She admits her signatures on both the lists. But her defence is that she was not the member of the District Level

Selection Committee rather she had signed as a token of having calculated the marks. It is argued that in fact Smt. Savitri Wadhawan (PW42) was the member of District Level Selection Committee but she was saved by CBI and was made a prosecution witness. This witness (PW-42) has testified that she was working as Principal Government Senior Secondary School Morni Hills, Panchkula. She was called by Deputy Commissioner and under her pressure she signed an affidavit **Ex.PW42/A** despite the fact that she was not the member of the District Level Selection Committee. In cross examination by Sh. Harit Chhabra, adv. for accused Smt. Raksha Jindal (A45), she testified that she was only a Head Mistress and was junior to the then BEO and therefore she could not be made member of Selection Committee. It is pertinent to note that in the note **Ex.PW31/DN** (D-40 Volume II Page 265) the name of Smt. Raksha Jindal has been mentioned as the member of the District Level Selection Committee. The perusal of both the award lists of District Level Selection Committee would show that her signatures are present prominently on both the lists in such a manner that as if she was an active member of the committee. Presuming that she had only calculated the grand total at the time of conducting the interviews, she was unable to explain as to when she was asked to put her signatures on second set of list i.e. Directorate list of Panchkula after about nine months

from the interview, why she did not ask for the original copy. In statement under Section 313 CrPC also she has tried to explain these facts but her arguments do not cut ice and therefore she is unable to absolve herself of the offences alleged.

96. Affidavits of the Chairpersons and the Members of District Level Selection Committees.

When Sanjiv Kumar filed Writ Petition No. 93/2003 in Supreme Court of India, the State of Haryana, with a view to file its reply asked the version of all the Chairpersons and the members of the District Level Selection Committees as to how their signatures were present on two lists. They filed affidavits to the Government of Haryana. CBI had collected these affidavits during investigation from the office of Directorate-Primary Education, Haryana. In these affidavits, the deponents had stated that Sanjiv Kumar had called them and asked them to sign the duplicate lists. During the trial, A-6 to A-62 had taken a consistent stand that the Government of Haryana misused the government machinery and procured these affidavits from the members. Infact, the affidavit was to be prepared as per the contents given to them and therefore it was submitted by them that the affidavit was not fully correct. My attention has been drawn to the testimony of Brij Mohan (PW-17) who was a member of District Level Selection Committee-

Faridabad. He testified the manner in which the fake award list was prepared in the year 2000. He also testified that on 26.07.2003 he was called by SDM-Palwal who practically forced him to sign the affidavit. PW-42 Savitri Wadhawan testified that the Dy. Commissioner compelled her to sign the affidavit, despite the fact that she was not the member of District Level Selection Committee. She also testified that this affidavit was already typed and she was made to sign it. Sher Singh (A-23 & A-23/DW-1), the Chairperson of District Level Selection Committee-Jhajjar testified that in the year 2003 he was called in the office of Dy. Commissioner Jhajjar. Anar Singh (A-24) was also present there. Dy. Commissioner-Jhajjar gave them a written proforma and asked them to create an affidavit as per the contents of the proforma. On being pressurized, they signed the same. Similarly, Sarwan Kumar Chawla (A-60/DW-1), Urmil Sharma (A-61/DW-1) and Jogender Lal (A-62/DW-1) have testified that they were made to sign the affidavit under the severe pressure of Dy. Commissioner-Yamuna Nagar.

I have perused these affidavits and I find that the language of most of the affidavits is same. The testimonies of these witnesses have not been controverted by any of the accused persons nor by the prosecution.

PW-17 Brij Mohan has clearly stated that he never visited Haryana Bhawan on 10.09.2000, as stated in para 3 & 4 of the affidavit. In fact, all

the Chairpersons and the Members who had given the affidavits are unanimous in submitting that the contents of the affidavits, as to how the fake list was prepared are not correct. In statements u/s 313 CrPC also the accused persons have stated that they were pressurized to sign these affidavits. In view of the evidence appearing on the judicial file which has been referred to by me as above, it is clear that the Chairpersons and members were supplied written material by the government machinery and they simply signed those affidavits under pressure. As per prosecution evidence, some persons who had not attended any of the meetings nor prepared any list were also made to sign such affidavits. Sufficient evidence is on record that the Dy. Commissioners and SDMs were used to procure these affidavits and infact some written proforma was also given to the deponents by these Dy. Commissioners etc. and the affidavits were prepared according to such written material. Furthermore, sufficient prosecution evidence has come on record to show that the fake award lists were not prepared in the manner, as stated in the affidavits.

97. The manner in which the Directorate Lists were prepared.

I would refer to the testimony of PW-2 Ravi Dutt, Steno-Typist in the office of District Primary Education Officer-Jind and PW-5 Milap Singh-Clerk in the said office. These witnesses have testified that Ajit Singh Sangwan

(A-26) was the District Primary Education Officer-Jind, Ram Kaur (A-27) was Dy. District Primary Education Officer-Jind and Mahavir Singh (a-28) was BEO-Julana, Jind. They testified that on 01.09.2000, both of them accompanied A-26, A-27 & A-28 in a government vehicle and reached Haryana Bhawan, Delhi at about 12 p.m. M.L. Gupta who was the P.A. to Director Primary Education gave them a selection list and told them to obtain its photocopies in such a way that the entries mentioning 'Interview' & 'Grand Total' of marks i.e. last two columns of the interview sheets do not appear on photocopies. Thereafter, both these witnesses went to Supreme Court in their government vehicle and obtained the photocopies as per the directions. Original lists were delivered by them to M.L. Gupta (PW-56) and Sardar Singh (PW-31) and the photocopies were given by them to Ajit Singh Sangwan (A-26). After returning to Jind, the interview lists were again typed by them on the basis of the photocopies of the lists. PW-2 testified that these typed lists were given to Ajit Singh Sangwan who destroyed the photocopies in his presence.

PW-14 Dhup Singh was the Dy. Superintendent in the Office of District Primary Education Officer-Jind at the relevant time and he got prepared the original Supreme Court list and had put his signatures in token of having verified the academic marks etc. He testified that he recorded the

telephonic message (Ext.PW14/A) in the telephone register (D-99) maintained in the office of District Primary Education Officer-Jind on 30.08.2000 in his own handwriting and presented it to Ajit Singh Sangwan who had endorsed it "Seen & Signed" on 30.08.2000 itself. This is a message from Shadi Lal Kapoor-P.A. to Sanjeev Kaushal-Addl. Principal Secretary to the Chief Minister. In this message, the District Primary Education Officer was directed to reach Haryana Bhawan-New Delhi on 01.09.2000. PW-14 testified that the Directorate List Ext.PW2/2 (D-5) was typed by two clerks namely Ravi Dutt & Milap Singh after returning from Delhi on 01.09.2000. He testified that Ajit Singh Sangwan had asked him to sign the second list but he refused to do so without getting the original. CBI had collected the relevant files of each District Primary Education Officer. One such file is D-16 recovered from the office of District Primary Education Officer- Faridabad which has an interesting feature. It has been collectively exhibited as **Ext.PW63/DB** (D-61). In this file, there are two documents. First is the list which tallies with the Directorate List of District Faridabad and has on it the signatures of the Chairperson and the Members of District Level Selection Committee. The sheets of this interview list are from page 1 to 28. From page 29 to 68 are the photocopies of the sheets of the award list of the candidates pertaining to district Faridabad, however, the column

of interview marks and grand total is concealed as if the photocopies of these award sheets were procured after placing a paper over this. As per the testimony of PW-63, this photocopy was prepared from the Supreme Court list of Faridabad by placing the paper on interview marks and grand total in the same manner, as testified by PW-2 & PW-5.

This evidence was led by the prosecution by examining the Investigating Officer (PW-63). This evidence has been assailed by A-3 by drawing my attention to the fact that the vertical and horizontal columns of D-4 (i.e. the Directorate List **Ext.PW15/L**) are neatly typed and formatted whereas the columns in D-22 (i.e. the Supreme Court List **Ext.PW17/A**) are **slanting and done in hand**. I have perused both the lists and found this observation of A-3 to be true. I have also compared the carbon copy of the interview sheet with its marks (placed in **Ext.PW63/DB**) with the Directorate List D-4, **Ext.PW17/B** (also given another **Ext.PW15/L**) and I find that the typed material and the manner of formatting tallies with each other. The marks filled in hand also tally with each other. Therefore, the award list available in D-61 is the copy of the Directorate List (D-4). A comparison of the photocopy of the award list (placed in D-61 with concealed marks and signatures) with the Supreme Court list **Ext.PW17/A** would show that this is the exact photocopy of the Supreme Court list. I

reproduce the cross examination of Investigating Officer PW-63 dt. 15.02.2012 as under:

"I had collected D-61 now exhibited as Ex PW63/DB during my investigation. It was seized during the search on 26.05.04. It consists of two part, first part is from page 1 to 28 which is a carbon typed copy but column 10, 11, 12 are written in ink and part second is from pages 29 to 68 which is photocopy of an award list prepared from 01.12.99 to 10.12.99 and photocopy has been obtained by placing a paper on the columns of total marks, interview marks and grand total marks.

I have seen Ex PW17/A which is Supreme Court List of District Faridabad. On comparing Ex PW17/A with the page No. 29 to 68 of Ex PW63/DB, I state that the these pages of Ex PW63/DB are the exact true copy of Ex PW17/A except the columns of total marks, interview marks and grand total marks which are blank in Ex PW63/DB. It appears that these columns are blank because of photocopy might have been taken by putting a paper on these columns. I state so because at serial No. 1 and 10 of page 29 of Ex PW63/DB the overtyping on the figures "62 %" and "58%" is also appearing in the Supreme Court List i.e. Ex PW17/A. This is an evidence which proves the method of preparation of second list."

This evidence of Investigating Officer is found to be truthful when this court compared the lists as already discussed above.

A-3 argues that the peculiar feature of the Supreme Court list Ext.PW17/A is that the signatures of R.S. Kukreja, who had conducted interviews for first one or two days are not available anywhere in this list. A-3 has drawn my attention to the fact that the duly signed complete list

available in D-61 (placed at page 1 to 28 in the file Ext.PW63/DB) also does not have the signatures of R.S. Kukreja, the first Chairman of the Faridabad Selection Committee. Further, it is argued that the signatures of R.S. Kukreja are very much available on the Directorate List Ext.PW17/B (D-4) at point 1 on first 13 pages. Thereafter, at point 1, the signatures of next Chairman i.e. Harbans Lal are available on the sheets of Directorate List. It is argued by A-3 that signatures of Harbans Lal on all the sheets are a common factor in the Supreme Court List and the award list at page 1 to page 28 of D-61. Therefore, it should be presumed that the Supreme Court list is the fake list and its copy has been kept on the file D-61. I am of the opinion that this argument is self contradictory. If Supreme Court list (D-22, Ext.PW17/A) is the fake list and the list (at page 1 to page 28 of D-61) are treated to be the copy of each other on the basis of **non availability** of the signatures of R.S. Kukreja, then, why is the difference in the interview marks in this list and the Supreme Court List. Since not only the marks, but, also the formatting of this list (page 1 to page 28 in D-61) and the Directorate lists are same, therefore, it stands proved that this list was prepared alongwith the Directorate List. If the signatures of R.S. Kukreja, the first Chairman are not available on first few pages and the signatures of Harbans Lal are available on all the pages, it will not make it a

copy of Supreme Court list. Rather, it shows some confusion among the person signing the lists.

I have already discussed that the pages 29 to 68 tally with the Supreme Court list not only in formatting but also in the typing at few places, as testified by the Investigating Officer. These sheets also show that these photocopies of the Supreme Court list of Faridabad was taken after putting some paper on the columns of the marks awarded. This method is the same method in which the photocopies of the Jind lists were got prepared by PW-2 and PW-5. One after another, the prosecution witnesses have testified that in September-2000, the second set of lists were prepared in the offices of respective DPEOs by the typists/clerks of the said offices and thereafter the marks were filled in as per the instructions issued to them. Hence, I would reproduce the relevant portion of the testimony of Sher Singh (A-23/DW-1) who testified in cross examination by Sanjiv Kumar (A-3) as under:

"It took us about 4-5 hours in preparation of the second list. So far as I remember, the roll numbers of candidates to be favoured which was with Sh. Anar Singh was hand written on a paper. In the page mentioning the roll numbers, there was a 'star' given on some roll numbers and these candidates had to be given '19 ½' marks while roll numbers 'encircled' had to be given '19'. The remaining roll numbers in that list belonging to General Category were to be given '17-18' marks in

interview. For the remaining roll numbers which were not mentioned in the said list, were to be given '5,6 or 7' marks.

*It is correct that there was no specific marks within the bandwidth of '5-7', which were to be allotted against any specific roll number, and we were free to allot any marks within the bandwidth of '5-7' candidates who were in the list of candidates of **B.C. category** to be favoured.*

*Regarding **S.C. Category**, the candidates to be favoured, the roll number were written in the said list, were to be given '3,4, or 5' marks and remaining candidates were to be given '2 or 3' marks. Within the width of '3 to 5' marks, we were free to give any marks within this bandwidth."*

The above quoted cross examination is infact reiteration of the facts, which this accused (A-23) had narrated in his examination in chief. This accused while testifying as a defence witness was very authentic as to in what manner the marks were put in the fake award list prepared in September-2000. This testimony fully supports the prosecution case that the Directorate lists were forged lists.

It is therefore clear that generally the lists were prepared in the offices of DPEOs in the month of September-2000 and the Chairpersons and the members were called to prepare it and sign the same. However, a few of the accused persons have stated in their statements u/s 313 CrPC and in their defence evidence that their signatures were taken elsewhere. e.g. A-60, A-61 & A-62 have testified that their signatures were not taken in the

office of DPEO, rather, they were called to a private school where their signatures were taken by Rajender Singh Rana (A-59) who was the Chairperson of the District Level Selection Committee-Yamuna Nagar. I do not doubt their testimonies in this regard.

98. **PRESSURE**

Pushkar Mal Verma (A-37), Durga Dutt Pradhan (A-38) and Bani Singh Rao (A-39) had taken the defence that they had not signed any of the lists. As already discussed, this defence stands falsified. There is no defence on their behalf that any kind of pressure was exerted upon them for preparing the fake award lists. Daya Saini (A-40), Ram Singh (A-41) & Puran Chand (A-42 since expired) who are the Chairpersons and the members of Panipat Selection Committee have also stated that they had signed only one list and the Directorate List is the genuine list.

Similarly, accused M.L. Kalra (A-32)-the Chairperson of the District Kurukshetra has stated that he has signed only one list i.e. Directorate List and that Directorate List is the genuine list. Therefore, A-32, A-37, A-38, A-39 A-40 & A-41 have not taken the defence that pressure was exerted upon them to sign the fake list. I have already discussed that their stand of Directorate Lists being the genuine lists stands falsified.

Consequently, this court has no option but to draw an inference that

A-32, A-37, A-38, A-39 A-40 & A-41 had prepared their respective Directorate Lists voluntarily without any pressure and were active participants in the conspiracy in question.

In respect of the remaining accused persons, I would say that most of them have admitted in their statements u/s 313 CrPC that Directorate List is a fake list and that they had to sign the same under immense pressure from Sanjiv Kumar, Vidya Dhar, Sher Singh Badshami, their respective Chairpersons or the senior officials of the Government of Haryana. Maman Chand Sharma (A-11) in his statement u/s 313 CrPC has stated that his signatures are present only on one list **Ext.PW15/M** which is the Directorate List and that his signatures are not present on the Supreme Court List **Ext.PW30/A**, but, he was not able to tell as to which list was genuine and which was fake. However, Sh. Harish Bhardwaj, Adv. for A-11, during final arguments took the stand that Directorate List was the fake list and the signatures of A-11 were taken by Chairperson Brahmanand by pressurizing him. Some of the accused persons in their statements u/s 313 CrPC gave vague answers regarding the preparation of the second award lists, but, at the stage of final arguments all of these accused persons {except A-32, A-37, A-38, A-39, A-40 & A-41} have made their stand clear that the Directorate Lists were the fake lists and they had to sign the same under severe

pressure. Ld. Counsels for these accused persons have drawn my attention to the Writ Petition no. 93/2003 in which Sanjiv Kumar has stated that these accused persons were compelled to sign the fake award lists. My attention has been drawn to the testimony of the Investigating Officer (PW-63) who has testified that as per his investigation, these accused persons had signed the award lists under compulsion. My attention has been drawn to the testimony of a defence witness Captan Singh (A-9/DW-1) examined by Brahmanand (A-9). This witness was the driver of the official vehicle which took Brahmanand to Haryana Bhawan, New Delhi on 01.09.2000. He testified that when they were coming back from Delhi, Brahmanand got the vehicle stopped in village Lakhanmajra. Brahmanand was sweating and he visited a doctor there. My attention has been drawn to the testimony of Sher Singh (A-23/DW-1) who testified in his evidence that he was called by the Dy. Commissioner-Jhajjar who instructed him to change the award lists as per new pattern. He testified that the Dy. Commissioner made him to talk to Sanjiv Kumar through his Reader on telephone and Sanjiv Kumar threatened him that his gratuity etc. would be stopped and that he should not play with the fire and that his daughter and son-in-law who are teachers would be transferred to far flung areas like Mewat. In such a scenario with such pressure and threats, A-23 was

compelled to sign the award lists. My attention has also been drawn to the testimony of Darshan Dayal Verma (A-50/DW-1) who testified that on instructions received from Shadi Lal Kapoor-P.A. to Sanjeev Kaushal-Addl. Principal Secretary to the Chief Minister, he went to Haryana Bhawan, New Delhi on 01.09.2000 at 2 p.m. where he met A-3 Sanjiv Kumar. He testified that Sanjiv Kumar told him that the necessary instructions have been given to the DPEO-Rewari regarding the preparation of the second award list. When he showed his hesitation to prepare a second set of award lists, Sanjiv Kumar threatened him of dire consequences and also took him to a room where Sher Singh Badshami (A-2) was sitting. Both of them made him clear that these were the orders of the State Government and that he had no option to defy the same otherwise he would have to face the consequences. My attention has been drawn to the testimony of the defence witnesses examined by R.S. Dahiya (A-56). Shashi Mehta (A-56/DW-1) testified that he was a colleague of A-56. He came alongwith R.S. Dahiya (A-56), Dalip Singh (A-57) & Kamla Devi (A-58) to Delhi on a private vehicle. R.S. Dahiya had dropped him at ITO and thereafter they had gone to Haryana Bhawan. He testified that thereafter at about 11.30 a.m., he reached Haryana Bhawan on an auto and came to know that R.S. Dahiya was in a meeting. He testified that when R.S. Dahiya came out of the meeting, he

was terribly perturbed and there were tears in his eyes and it appeared that he was tortured and there was some pressure on him. A-58 also appeared in highly disturbed state. After some days, when he visited the office of R.S. Dahiya, he fell from his chair and got some injuries. He testified that he alongwith Vinod Gupta took R.S. Dahiya to hospital. Later, R.S. Dahiya told him that he was pressurized to prepare a list otherwise he would not get the pecuniary benefits and his family members would also suffer. Vinod Kumar Gupta (A-56/DW-2), a colleague of A-56 also testified that in September-2000 he found R.S. Dahiya in a disturbed state of mind and once he fell from his chair and had to be taken to the hospital. My attention has also been drawn to the testimony of PW-17 Brij Mohan-a member of Faridabad Selection Committee who has testified that he retired from government service on 31.08.2000 and when he reached at his residence, Harbans Lal (A-16) alongwith some members of the staff reached his house and told him that he had to sign a second list because they have directions from the Director and Commissioner to that effect. They also told that they are coming straightway from Haryana Bhawan, Delhi. He told them that he is retired and would not sign to which they stated that they themselves were under great pressure to do it. Somehow he was able to send them back assuring that he would reach to the office next day. However, on the next

day he did not go to the office and numerous calls were made from the office to his residence. At about 8 p.m., Harbans Lal threatened him on telephone that he (PW-17) that he has not yet received a single penny after retirement and that his daughter is also working a teacher on contract basis who can be relieved at any time and that his wife who is a teacher would be transferred. PW-17 testified that he became so pressurized and told Harbans Lal to come to the office next day. On next day, he visited the office and signed the second award list but on first few pages, he was able to write 'UP' under his signatures. He clarified that 'UP' meant 'Under Pressure'.

I am convinced with the submissions of Sh. N.K. Sharma-Adv., Sh. S.C. Chawla, Adv., Sh. R.K. Sharma, Adv., Sh. Ashok Kumar-Adv., Sh. Amit Kumar-Adv., Sh. R.C. Dalal-Adv., Sh. Sumit Chaudhary, Adv., Sh. Arvind Chaudhary, Adv., Sh. Inder Pal Khokhar, Adv., Sh. Harit Chabra, Adv. and all the Ld. Counsels for the accused persons other than A-32, A-37, A-38, A-39 A-40 & A-41 and I am convinced that the signatures of these accused persons were taken on the award lists by putting pressure, threatening them of depriving them from their pensionary benefits, transferring them or their wives, children and relatives to far off places etc. Ashok Kumar-Adv. has argued that an oppressive pressure from the Director and political bosses

created such a fear in the minds of accused persons that they found themselves optionless and were compelled to sign the award lists. It is argued by Sh. Ashok Kumar, Adv. that the fact of fear exerted by the government of the day cannot be brought in evidence because there is no scientific method to measure the pervasiveness of such fear psychosis. However, Ld. Counsel has tried to explain this by citing a poem by Christina Rossetti.

Who Has Seen the Wind?

By Christina Rossetti

Who has seen the wind?

Neither I nor you:

But when the leaves hang trembling,

The wind is passing through.

Who has seen the wind?

Neither you nor I:

But when the trees bow down their heads,

The wind is passing by.

Source : *The Golden Book of Poetry (1947)*

I fully agree with the submissions of Ld. Counsels on this aspect. The overwhelming evidence on record shows that these accused persons were put under severe pressure and found themselves between devil and the deep sea. But at the same time, it must not be forgotten that these accused

persons were the top education officers in their respective districts having a lot of experience with them. They were the public servants whose duty is to act **without fear or favour** and to uphold the Constitution of India at all cost. The allegiance to the Constitution of India may come under test from time to time. If a public servant fails in this test, he will have to suffer.

It has been argued by R.C. Dalal-Adv. for some of these accused persons that these accused persons had no intention to create a fake aware list. Rather, each of them signed these award lists with the intention to save his own job, pensionary benefits, pensions and even his own life alongwith the life of his spouse and children. My attention has been drawn to the definition of 'Intention' in a Law Dictionary and argues that intention is doing an act with desire for certain **consequences**. It is argued that none of these accused persons had any desire to create a fake list. The following definition in **Salmond on Jurisprudence** is reproduced as under:

“Intention is the purpose or designed with which an act is done. It is the **fore-knowledge of the act and desire being the cause of the act**, in as much as they fulfill themselves through the operation of the will. An act is intentional if, and in was far as, it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied.”

I would like to point out that certain psychological emotions in man

like fear, greed, anger, enmity etc. are the components of motive. These psychological components do not form the part of '**intention**'. For example, greed for money may create a motive which may further lead to creation of intention for commission of an offence. Similarly, 'fear' may give rise to a motive which leads to the creation of intention in the mind of an accused. Infact, the psychological element of motive sometimes may be very good. e.g. A person may commit murder of a terrorist under the benign motive of saving the nation. The word "desire" used in this definition does not mean "an intention free of fear." I have already stated that "fear", "anger", "greed", "enmity" etc. are the psychological components of 'motive' and not of the 'intention'. Therefore, it cannot be said that these accused persons unintentionally prepared the forged lists.

I am reproducing the relevant portion on 'motive' from *Chapter 6 'MENS REA'*, as discussed in the book '**CRIMINAL LAW (7th Edition)**' by **P.S. ATCHUTHEN PILLAI** as under:

*"Motive is not intention. Motive is an attitude of mind. Motive is the emotion prompting the act, e.g., love, compassion, **fear**, jealousy, perverted, lust, hatred wish to frighten, political gesture, desire for money. Mrs. Hyam wanted to frighten her rival. The I.R.A. planting the bomb apparently wish to make a political gesture. The father of the deformed child may want to put it out of its misery."*

I would like to refer the commentary (page 5 & 6) on 'The Indian

Penal Code' by 'Ratan Lal & Dhiraj Lal' (23rd enlarged edition, reprint 2012). As per this commentary, **criminal intention** simply means **the purpose or design of doing an act forbidden by the criminal law without just cause or excuse**. I would say that this is the most appropriate definition of intention and I would say that going by this definition, all the accused persons from A-6 to A-62 would be held to have intentionally prepared/signed the fake award lists. In this book, in respect of 'motive', it is mentioned that **an act which is unlawful cannot, in law, be excused on the ground that it was committed from a good motive**. Springs of human action and conduct are unfathomable and what motivates them is difficult to postulate.

Therefore, motives may be good, bad, ulterior or superior or even may not match with the 'intention' of an offender.

Here, I would say that Sh. R.C. Dalal-Adv. is confusing the word 'motive' with 'intention'. In this case, the accused persons knew what they were doing. They knew the consequences of the same, but, of course I would agree that their desire for the consequences arose from a motive to save their own career interests. In these circumstances, it cannot be said that these accused persons do not have any intention to commit the said crime.

I have already stated that the accused persons were put under severe pressure. Now, this Court has to see as to whether this pressure would be covered u/s 94 of the IPC? I reproduce Section 94 of Indian Penal Code as under:

“94. Act to which a person is compelled by threats-Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause apprehension that instant death to that person will otherwise be the consequence, provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.”

The facts before this court do not show that any of the accused persons was under the reasonable apprehension of '**instant death**'.

I would like to discuss here the testimony of Jogender Lal (A-62) who examined himself as defence witness (A-62/DW-1). He testified that Rajender Pal Rana (A-59) was the Chairperson of District Level Selection Committee- Yamuna Nagar and he was its member. The interviews were conducted in December-2000. He testified that in the month of August or September-2000 at about 8 p.m., several persons including Rajender Pal Singh (A-59) and Mehtab Singh (PW-27), who was Assistant in the office of DPEO-Yamuna Nagar came to his house alongwith the award lists which had already been signed by A-59 and Ms. Urmil Sharma (A-61). A-59 asked

him to sign the said award lists, but, he refused stating that he had already retired. He further testified that when he refused to sign, the persons accompanying Rajender Pal Singh and Mehtab Singh started beating him and thereafter took him to the residence of A-59. He testified that those persons went to the extent of twisting his hands. Fearing threat to his life, he signed the aforesaid award lists. This testimony was controverted by A-59 in cross examination. Sh. Ashok Kumar, Adv. for A-59 argues that A-59 himself was under pressure to prepare the second award list and this pressure was equally upon A-62, apart from other members. However, it is argued that the testimony of A-62 regarding beating given by A-59 is false.

I agree with this submission of Sh. Ashok Kumar, Adv. I may point out that this is a failed attempt of A-62 to bring his case within the four corners of Section 94 IPC. I may point out that Mehtab Singh-the Assistant in the office of DPEO-Yamuna Nagar had appeared before this court as PW-27, but, A-62 did not put his story to him in the cross examination. Accordingly, this part of his testimony that he was beaten up for the purpose of getting his signatures is unworthy of credence. Therefore, his case does not fall within four corners of Section 94 IPC, though, I would say that there are sufficient circumstances to show that he was put under severe pressure to sign the aforesaid lists.

Sh. Ashok Kumar, adv. has referred to **Afzal Vs State of Haryana, (1996) 7 SCC 397** and submits that Supreme Court of India acquitted one Ct. Krishan Kumar on the ground that **he had put/forged the signatures of his boss, on being pressurized by him.** I have perused this case law and I am of the opinion that The Supreme Court of India was dealing with a case where on the direction of the SP, a constable had put his signatures on the affidavit to be filed in Supreme Court of India. It was specifically held that although this constable had put signatures of his boss, but his intention was not to forge his signatures. I may point out that situation would have been different, had the said constable forged the signatures of his superior without his consent. Moreover the Supreme Court of India was discussing the question of contempt and not of forgery in this judgment. Hence this case law is of no help to these accused persons.

99. **PARITY WITH PW-17 ?**

Ld. Counsels for accused persons taking the plea of having signed the Directorate lists under pressure have drawn my attention to the testimony of Brij Mohan (PW-17) and have claimed parity with him. I would mention here that Brij Mohan was the member of District Level Selection Committee-Faridabad and was cited as accused no. 19 in the present charge sheet. However, he was also cited as prosecution witness no.

13 in the list of witnesses filed with the charge sheet. Vide my order on charge dated 23.07.2011, I dealt with his arguments and discharged him, while specifying that he must be treated as a prosecution witness. I reproduce the relevant part of the order on charge as under:

55. *First of all, I will take up the submissions of A-19 Brij Mohan. He was Block Education Officer, Palwal and was a member of the Selection Committee for District Faridabad. It is argued on behalf of this accused that the prosecution has cited him as a witness as well as accused. It is further argued that he was not a part of the criminal conspiracy and he has explained his circumstances clearly in his statement u/s 161 CrPC. It is argued that a great pressure was exercised upon him to sign the forged list (i.e. Directorate List) but he somehow managed to put the words "U.P." under his signatures signifying "Under Pressure". It is argued by the accused that he had retired on 31.08.2000 but on the very next date he was pressurized and forced to sign on the list. It is argued by him that neither he was a part of any conspiracy nor he put his signatures intentionally or voluntarily. I have perused the charge sheet as well as statements u/s 161 CrPC. As per the charge sheet, A-19 has been mentioned as a prosecution witness at serial no. '13'. I have perused his statement u/s 161 CrPC dt. 18.08.2004. In his statement, he identifies the "Supreme Court List" which bears his signatures on each paper and submits that range of interview marks given to candidates in this list is ranging between 7 to 19 out of 20. He further states u/s 161 CrPC that after seeing the other list (i.e. the Directorate List) of District Faridabad which is claimed to be forged list by the prosecution, this accused (also PW-13) identifies his signatures and he further states that range of interview marks given to the candidates in the Directorate List ranges between 3 to 5 (lower side) and 17 to 19.50 (higher side) out of 20 for General Category candidates. He further states that the range of interview marks of SC & OBC community is 2-3 (lower side) and 6-7 (higher side) out of 20. He further states that on the Directorate List, he had signed under the pressure and therefore he had written the word "U.P." on few sheets under his signatures which means "Under Pressure".*

56. *I have gone through the 'Supreme Court List' and the 'Directorate List'*

of District Faridabad and I find that in the Directorate List the word "U.P." have been written in very small letters which supports the submissions of A-19. I have put a question to Ld. Special Public Prosecutor as to what is the status of A-19. Whether the prosecution treats him as a witness or wants to prosecute him? Ld. Special Public Prosecutor submits that he leaves it for the court to decide as to whether this court treats him as a witness or as an accused. I find merit in the submissions of A-19. I am of the opinion that since CBI has charge sheeted him as an accused, it is to be seen as to whether prima facie a case against him is disclosed or not. It is true that signatures of A-19 find place on the Supreme Court List as well as on the Directorate List. Perusal of the Directorate List would show that upto 8 pages this accused has written word "U.P." under his signatures justifying his statement that he had not signed the list voluntarily or intentionally. Putting of word "U.P." i.e. Under Pressure is an indication that he was forced to sign the forged list. His testimony u/s 161 CrPC as PW-13 throws light as to how it is to be decided as to which list is the forged one. He has pointed out the forged list by the manner of the range of interview marks given as well as from the word "U.P." written by him under his signatures. **By signifying that he was signing under pressure, he clearly disassociated himself from the conspiracy. He has left his imprint of protest against all the doings of other accused persons while putting his signatures and thereby stood apart.** These circumstances clearly show that A-19 was not part of the conspiracy and had not signed willingly rather he signed under protest. In these circumstances, I am of the opinion that prima facie case against A-19 is not disclosed. Hence, I discharge him. His bail bond and surety bond are cancelled. **However, would remain an important witness on behalf of the prosecution and throw light on the entire transaction."**

Accused Pushkar Mal Verma had preferred a petition (CRL.M.C. No. 2691/2011) in High Court of Delhi in which he had claimed parity with Brij Mohan and prayed to be discharged. Hon'ble Mr. Justice M.L. Mehta dismissed his petition vide order dt. 01.06.2012 observing that *"the case of Brij Mohan was entirely distinguishable in that he was cited as a witness by*

the prosecution as well as the accused.” Infact, at the stage of charge, it was difficult to take a decision about the status of Brij Mohan and therefore the prosecution left it to the discretion of the court as to whether he should be treated as a prosecution witness or as an accused. Faced with such situation, this Court took a view favourable to that accused especially in view of the fact that not only that he put his **dissent** to the entire transaction by writing 'UP' and thereby stood away from the conspiracy, but also, he could have furnished authentic evidence as to which was the genuine list and which was the fake list. Therefore, the rest of the Chairpersons and the members cannot claim any parity with him, despite the fact that they have been able to convince this court that they had prepared/signed the forged award lists under pressure from the bureaucratic and political bosses. It is relevant to mention here that Brij Mohan was later on examined as PW-17 by the prosecution.

Sh. Sumit Chaudhary, Adv., Sh. Amit Kumar, Adv., Sh.R.L. Prasad- Adv., Sh. Ashok Kumar- Adv. have repeatedly drawn my attention to the statement of PW-17 who testified in his cross examination dt. 08.09.2011, **“at the time of signing the fake lists, it clicked to his mind that he should write 'UP' under his signatures so as to show that I was not willing to sign. It is correct that the quality of presence of mind varies**

from person to person.” It is argued by Ld. Counsels that the remaining Chairpersons and the members were not so quick as to do something like this to express their dissent. I would like to disagree here. PW-17 has testified that pressure was built upon him about two days prior to his signing of the lists. This time was enough for him to devise some method to express his dissent. In fact, his testimony shows that the Chairperson was interacting with him on telephone frequently pressurizing him to put his signatures. The Chairpersons and the Members very well knew as to what was being done. I am not inclined to believe that they were not interacting in this regard with each other. Therefore, they had an opportunity to refuse to accept the directions from the superiors. Even a small gesture of protest would have saved them. I may here give an example from the facts of this case itself. Had Prem Prashant (PW-16) not stated, in the meetings held in Haryana Niwas and at the residence of A-1, that it was not possible to change the award lists, he would have found himself to be in the array of the accused persons in the present trial. This example has been given by me because a large number of accused persons, during his evidence as well as during the trial, had levelled allegations that he was also an accomplice to the offence. One sentence of protest by him has saved him from prosecution. Similarly, two letters of protest (i.e. UP) have saved Brij

Mohan from the trial and have placed him in the list of prosecution witnesses.

100. How the original lists lying in Almirah were replaced

When it stands proved that fake lists (Directorate) were prepared by providing the photo copies of the original lists (i.e. the Supreme Court lists) to some chairpersons/DPEOs, the question would arise as to how the award lists, which were lying in a sealed Almirah in the office of Director-Primary Education and were taken out and replaced with the newly prepared fake lists i.e. Directorate lists. The direct evidence is not forthcoming, though Sanjiv Kumar (A3/DW-9) has stated (in cross examination dt. 17.07.2012 by Ld. Special Public Prosecutor) that Om Prakash Chautala-the then Chief Minister gave a suggestion to cut open the almirah from the back side and then rear portion be re-welded and put against the wall. Therefore, prosecution is relying upon the circumstantial evidence. First of the circumstances is that the Supreme Court lists (i.e. the original lists) were out in the month of August 2000. The prosecution has relied upon the testimony of Sardar Singh (PW31), Mohan Lal Gupta (A56) and Balram Yadav (PW58).

PW31 Sardar Singh was the Superintendent in the office of Director

Primary Education Haryana during the relevant time. He testified that in the month of May or June 2000, Rajni Shekri Sibal got the almirah containing the award lists sealed by wrapping in 4 meters of clothes after locking it. Sealing was done with the seal wax affixing the impression of one rupee coin on it. Thereafter, she put the keys in an envelope and affix the seal on that envelope as well. She was transferred on 11.7.2000 and the charge of Director Primary Education was taken over by Sanjiv Kumar (A3). He testified that on second and third week of August 2000, Sanjiv Kumar (A3) called him and Mohan Lal (PW-56) and directed him to take two bags to Prerna Guest Huose, Panchkula to find out as to how many SC/BC candidates have been selected against general category. Therefore he along with Mohal Lal Gupta went to Prerna Guest House, Panchkula for checking the award lists, which were lying in those two bags. Balram Yadav (Assistant) was called from the office to assist him (i.e. Sardar Singh). However they could not make out as to how many SC/BC candidates would come in the State Level Merit list. When informed about the difficulty, Sanjiv Kumar (A3) called Sardar singh forthwith and also inquired as to why help of Balram Yadav was taken. Sanjiv Kumar was not satisfied with his explanation and got annoyed. He (ie. PW31 Sardar Singh) told him the difficulty in completing the job, Sanjiv Kumar (A3) angrily stated that 3 or 4

days have been wasted and asked his PA Mohan Lal to bring the lists from Prerna Guest House. PW-31 further testified that at the directions of Sanjiv Kumar (A3), he and Mohan Lal Gupta reached Haryana Bhawan, New delhi on 1.9.2000, where all the DPEOs and their staffs were already present. Sanjiv Kumar also came and gave a speech to DPEOs stating that in the lists prepared by them, several SC/BC candidates are figuring against the general vacancies and directed the DPEOs only to come to his room on the second floor of Haryana Bhawan, New delhi. After the meeting, Sanjiv Kumar (A3) directed that if any DPEO does not have the copy of the award lists with him, then the copy of the lists available with him (i.e. with the Director) may be given to such DPEOs. Thereafter PA gave the list of district Jind to Ravi and Ajit Singh Sangwan, who return the original after making the photo copy. He further testified that on 16.9.2000 the Director called the six members of the committee for the purpose of compilation of result in his room where sealed almirah was lying. The event was being videographed. Sanjiv Kumar (A3) asked the committee member to check the seal on the almirah and on being asked told that the seal were intact, he gave the keys to him for opening the almirah. Thereafter 18 lists of 18 districts were taken out and handed over to Mukesh Bajaj (PW-55) of HARTRON. The lists of interview of candidates having B.Ed. qualification

was in almirah of PA to Sanjiv Kumar. This list was also handed over to Mukesh Bajaj (PW-55) of HARTRON and a memo **Ex.PW31/A** was drawn describing the event of opening of almirah, which was signed by the six Result Compilation Committee Members.

Mohan Lal Gupta (A56) was the PA to Director Primary Education. He testifies that Rajni Shekri Sibal (PW-23) had sealed the almirah in which the original award lists were kept. This sealed almirah was small sized kept in a corner behind the wooden screen and it was not visible to everybody, who entered the room. He testified that in 3rd and 4th week of August 2000, at the directions of Sanjiv Kumar (A3), the then Director Primary Education, he called Sardar Singh, Superintendent, and both of them went in the chamber of Sanjiv Kumar (A3), where they found that Sanjiv Kumar was seeing the award lists before him. He (i.e. A-3) told Sardar Singh that some SC/BC candidates were over lapping the general candidates and directed him to take award lists in the Prerna Guest House situated at Panchkula for the purpose of checking as to whether the SC/BC candidates are occupying the space of general category. These award lists were in two leather bags. In a vehicle of DPEP department arranged by the Director, he (i.e. PW56) accompanied Sardar Singh and reached Prerna Guest House, Panchkula. Sardar singh was unable to understand and what was to be done and he

showed one award list. PW56 testified that he could not understand as to how the job given by Director could be implemented. Immediately he came to office and reported the matter to Director. Sardar Singh remained for a few days in Prerna Guest House and had also called Balram Yadav for assistance. He testified that Sanjiv Kumar (A3) told that progress is very slow and the result is to be declared at earliest and directed him to arrange a talk with Sardar Singh immediately. He (PW56) connected the telephone of Sanjiv Kumar to Sardar Singh. Sanjiv Kumar (A3) threatened Sardar Singh for the slow progress and asked him to come immediately. After sometime Sardar Singh came and he (PW56) also accompanied him in the chamber of Sanjiv Kumar (A3). However Sanjiv Kumar (A3) asked him (i.e. PW56) to stay out, when Sardar Singh came out, he told that the Director was angry and the award lists were brought back from Prerna Guest House on the same day **and delivered the same to the Director. He told that the award lists, which had been seen in Prerna Guest House, were complete and all columns were filled in.** He testified that at the directions of Sanjiv Kumar, he along with Sardar Singh reached Haryana Bhawan, New Delhi and found some DPEOs present there. Sanjiv Kumar came in the conference hall of Haryana Bhawan and addressed to DPEO that SC/BC candidates are overlapping the general vacancies. He also told

them that if anybody does not have the copy of award lists, he can have it from Sardar Singh from the bag already lying in conference hall. He also instructed to DPEO to come up stairs in the room for the purpose of giving important instructions in this regard. Some of the DPEOs got the xerox copy prepared from the market and returned the original to Superintendent Sardar Singh. Similarly after few days, he (i.e. PW56) was directed to reach Guest House of Water Supply & Sanitation, Department of Punjab, 1257, Sector-10, Chandigarh in a DPEP vehicle. Sanjiv Kumar (A3) had also reached there. Some DPEOs, who did not turn up at the meeting in Haryana Bhawan, New Delhi, also reached there. The said DPEOs were also told that in case they were not having any award list, they could take it from him but everybody was having the copy of award lists. **He testified that they were called by Sanjiv Kumar in a room in which some other persons were also present and the said DPEOs were also briefed.** He also testified that the remaining DPEOs, who had not attended the aforesaid meeting, were directed to collect the same from DPE office. On 16.9.2000, the proceedings of opening the sealed almirah, in which the awardlists of JBT teachers were kept, were carried out and duly signed by these members of result compilation committee.

Third witness relied upon by the prosecution is PW58 Balram Yadav.

He was posted as Assistant in the office of Director Primary Education Haryana at the relevant time. He testified about the vacancy status of each district in his evidence. He also proved the note **Ex.PW30/E** stating the selection formula, which was approved by the Chief Minister. He testified that in August 2000, Sardar Singh, Superintendent, called him to Prerna Guest House and where the exercise was to be made as to how many candidates of reserved categories were competing with the general categories. Accordingly he went to Prerna Guest House and saw the award lists in the bags and found that Sardar Singh was doing the said exercise. He testified that these award lists were complete award lists containing the interview marks as well as grand total. The said award lists were also containing the signatures of chairpersons and members of District level Selection Committees. Although he did not see all the award lists but 2 or 3 award lists were open before Sardar Singh and they tried to compare the minimum marks obtained by general category candidates with the maximum marks obtained by SC/BC candidates. But they could not reach to any conclusion. This work was carried out for two days. On the second day, Sardar Singh received a telephonic call. Thereafter Sardar Singh told him that this work had been discontinued.

By examining these three witnesses, prosecution wants to show that

original award lists were already out before 16.9.2000 when the drama of de-sealing the almihra was conducted by Sanjiv Kumar (A3). On the other hand, Sanjiv Kumar (A3) has vehemently assailed the testimony of all the three witnesses. It is argued that Sardar Singh, M. L. Gupta and Balram Yadav are testifying falsely at the behest of the CBI. It is argued that there is no record of vehicles to show that any vehicle of DPEP had taken them to Prerna Guest House and brought back them from there. There is no record of their stay in the said guest house. It is argued that in fact there is no evidence or log book to show that any Government vehicle or vehicle of DPEP had taken them to SCERT Gurgaon and thereafter to Haryana Bhawan, New Delhi. Sanjiv Kumar (A3) has expressed surprise that whereas M. L. Gupta and Sardar Singh, the subordinates to the director, would not pick up the dak bags, the Director, the Senior IAS officer would himself carry these dak bags to Haryana Bhawan, New Delhi. Similarly my attention has been drawn to the testimony of M. L. Gupta, wherein he has testified that the meeting at the Water Supply Guest House with DPEOs had taken place after the meeting with DPEOs at Haryana Bhawan, New Delhi. It is argued that some DPEOs pertaining to the district near Chandigarh were first called to Punjab Guest House (i.e. Water Supply & Sanitation Guest House belonging to Punjab government) together and thereafter the

DPEOs of the districts close to Delhi were called at Haryana Bhawan, New Delhi. Sanjiv Kumar (A3) has drawn my attention to the gate passes of HARTRON, which shows that ascending and descending lists of the award lists were sent by HARTRON to the office of Director Primary Education for the purpose of checking the particulars on 25.8.2000. It is argued that Sardar Singh and M. L. Gupta were given the job to check the particulars of the candidates, their academic qualifications etc. (minus the interview marks and grand total) mentioned in this list from their application forms. As per the gate pass **Ex.PW55/DA** (in file D-59), it is clear that on 25.8.2000 Sardar Singh (Superintendent, DPE) had taken the district wise descending lists of JBT and Balram Yadav (Assistant in the office of DPE) had taken the ascending list of JBT teachers vide gate pass **Ex.PW55/DB**. It is argued that Sardar Singh was assigned the job of checking the HARTRON lists as mentioned in the gate pass **Ex.PW55/DA** taken out by HARTRON by Sardar Singh on 25.8.2000. Sanjiv Kumar (A3) has examined one witness in defence namely Ramji Tewari (A3/DW3) in his support. He testified that in the year 2000, he was working in Haryana Prathamik Shiksha Parishad as assistant editor and was incharge of conducting workshops involving practising teachers for the purpose for creating the text book. He testified that it was a continuous process where a group of 20 or 25 teachers would

be followed by another group and that these workshops were being conducted in Prerna Guest House, Panchkula. In August 2000, two officials from the Directorate of Primary Education namely M. L. Gupta and Sardar Singh had come with one bag. They demanded a room but since the rooms were not available, space in one corner of the hall was given to them. He testified that M. L. Gupta stayed barely there for 5-10 minutes. He also testified that at 5/6:00 pm, Sardar Singh left for his house and left the bag there in Prerna Guest House saying that these were not very confidential documents and that he would come again on next day. On next day, he came again at about 10/11:00 am and took away the said bag from Prerna Guest House. He testified that Sardar Singh was comparing the lists from HARTRON with the forms. In cross examination by Sh. I. D. Vaid, Ld. Special Public Prosecutor, as to how he came to know that he was checking the HARTRON lists with the application forms, he testified that out of curiosity he asked M. L. Gupta and Sardar Singh about those lists and they answered that these were HARTRON lists brought for the purpose of proof reading.

In view of the examination of the aforesaid witness by Sanjiv Kumar (A3), I would say that the fact that M. L. Gupta and Sardar Singh had visited Prerna Guest House in the month of August 2000 stands proved,

therefore if CBI had not collected any record of their stay or not collected the records of vehicles which carried them to Prerna Guest House, the same would not dent the prosecution case.

Now court has to see as to whether the M. L. Gupta and Sardar Singh were checking the HARTRON lists with the applications forms of the candidates with a view to verify their particulars. I would refer to the gate passes **Ex.PW55/DA** and **Ex.PW55/DB**. Both the gate passes are dated 25.8.2000. **Ex.PW55/DA** is the gate pass, which permits Sardar Singh to take the district wise descending list of 8192 JBT candidates from HARTRON to the DPE office. The gate pass **Ex.PW55/DB** authorizes Balram (the assistant) to take the ascending list of 8192 JBT candidates from HARTRON to DPE office. Both these gate passes are placed in D-59. Mukesh Bajaj (PW55) the then Assistant General Manager HARTRON testified that the job of compilation of JBT teachers in Haryana was entrusted to HARTRON by Director Primary Education. He testified that entire work of result compilation committee of JBT teachers was done under his supervision along with other committee members appointed by Director Primary Education. He testified that the applications forms of candidates, who had applied for the post of JBT teachers in Haryana were received by HARTRON from department sometime in July 2000. On the

basis of information i.e. names of candidates, parentage etc. given in the application forms, a data was fed in the computer pertaining to all the application forms. Then 4 or 5 days from the receipt of application forms, this work was completed. On 15.9.2000, he was directed by his superior to go to the office of Director Primary Education Haryana for collecting the award lists on the basis of which the result was to be applied with. He testified that on 16.9.2000, the almirah was de-sealed and envelopes containing the award lists were taken out and a memo **Ex.PW31/A** was prepared on 16.9.2000, which was signed by him along other members of the result compilation committee. He proved his signatures on all the award list (which are the Directorate lists). He testified that on 30.9.2000 the work of result compilation committee was complete and the department was intimated. **He testified that compiled result along with original documents were sent to Director Primary Education on 3.10.2000 through a gate pass Ex.PW31/DP.** This testimony shows that the applications of the candidates were sent to HARTRON for compilation of the particulars of the candidates in July 2000. The award lists were received by Mukesh Bajaj on 16.9.2000 and thereafter all the records were sent by HARTRON to Director Primary Education on 3.10.2000. The gate passes Ex.PW31/DP (placed in file D-59) mentions that S. S. Tanwar (i.e. Sardar

Singh) was authorized to take the original interview JBT records and result of sheets after preparation of final result, to Director Primary Education. The other gate passes i.e. Ex.PW55/DA and Ex.PW55/DB mentioned about the taking of the ascending and descending lists by Sardar Singh and Balram respectively but do not mention that they are also taking the records i.e. application forms of the candidates from HARTRON to DPE. In cross examination PW55 has stated that application forms of all the districts were sent to HARTRON on 31.7.2000. **It is further stated in cross examination by this witness that two persons from DPE office came to HARTRON for the purpose of proof reading as well as taking away of all the application forms of JBT candidates sent from the district.** This testimony is not in respect of gate passes Ex.PW55/DA and Ex.PW55/DB because these refer to only the descending and ascending lists of JBT candidates. Gate pass Ext.PW55/DA mentions "District wise descending list of JBT T. records 8192." Gate pass Ext.PW55/DB mentions "Ascending list of JBT T.records 8192." A-3 argues that it means that total record of 8192 applications were taken by Sardar Singh and Balram Yadav alongwith the ascending and descending lists. I disagree with this submission. If this explanation of A-3 about the contents of gate passes is accepted, it would mean that whereas Sardar Singh was taking 8192 application forms

alongwith descending list, Balram Yadav was also be taking 8192 application forms alongwith ascending lists. In such case, these applications would be double the actual number. Therefore, the only logical interpretation would be that these gate passes only authorize the ascending or descending lists of 8192 candidates. I may point out that in cross examination of PW-55, Sanjiv Kumar nowhere suggests that even the application forms were sent out of HARTRON for any purpose during the period July,2000 till 03.10.2000. Therefore, it stands proved that it was the gate pass Ext.PW31/DP dated 3.10.2000 through which S. S. Tanwar had taken away all the original records after preparation of the final result. Consequently, the stands of A-3 that Sardar Singh and Balram Yadav had brought out the application forms from HARTRON on 25.08.2000 is proved to be false.

Further, the proforma of the award lists would be different from the proforma of the HARTRON lists. All the HARTRON lists would be computerized. Whereas in the award lists, prepared by District Level Selection Committee (except Panchkula lists which are computerized), the interview marks and grand total have been filled in hand writing. Further since the result had yet not been prepared on 25.8.2000 (because the award lists were received by HARTRON on 16.9.2000 from the office of DPE),

therefore the HARTRON lists would not contain any interview marks and grand total. Moreover, the award lists would be duly signed by Chairpersons and members of interview committees but HARTRON list would not have such signatures. Hence, HARTRON lists would be clearly distinguishable from the actual award lists.

In this regard, I refer to the testimony of PW-56 Mohan Lal Gupta. He had testified that the interviews for the posts of JBT teachers were conducted by various District Level Selection Committees during December-1999 when R.P. Chander was Director. These lists were kept in the almirah which was situated in the room of Director Primary Education. Rajni Shekri Sibal succeeded R.P. Chander and sealed the almirah containing the award lists. He testified that in 3rd or 4th week of August-2000 Sanjiv Kumar called him in his office and he found that Sanjiv Kumar was seeing the award lists which were before him and he stated that some SC-BC candidates were overlapping the general candidates. He also stated that at his instructions he and Sardar Singh went to Prerna Guest House and both of them had an opportunity to see the award lists. In cross examination, Sanjiv Kumar specifically asked as to how he knew “that the lists placed on the table before Sanjiv Kumar were the District Selection Lists and not any other official document?” PW-56 Mohan Lal Gupta-PA. to Sanjiv Kumar

testified that had stated so because **he was aware of the proforma of the award lists and on this basis he could say that Sanjiv Kumar was perusing the District Selection Lists, the column of which were filled.** He also explained (in cross examination dt. 16.12.2011 by A-3) that this type of proforma was common to all the selections of the teachers i.e. of higher education, secondary education etc. and therefore he was aware about this proforma. I may point out that it is not the case of A-3 at that time in the office of District Primary Education, the award lists of some other posts were also lying. Sardar Singh and Mohan Lal Gupta, both have categorically testified that their job was to check as to how many BC/SC candidates were eating the space of general candidates. This job could have been done if the grand total marks of candidates of all the categories were available on those lists. It is admitted case of accused Sanjiv Kumar that the HARTRON lists taken out from HARTRON on 25.08.2000 were not containing the interview marks and the grand total marks. It was not possible also because the award lists were received in HARTRON on 16.09.2000. Therefore, on the basis of HARTRON lists, it was not possible for these officials or for any other person to give atleast a rough idea as to how many persons of reserved categories were likely to encroach the space of general candidates. Therefore, the plea of Sanjiv Kumar that these

persons were checking the HARTRON lists stands falsified. I would refer to the letter no. HARTRON AGM 3475 dt. 09.08.2000 Ext.PW31/D-3 in which the concerned officer of HARTRON has informed the Director Primary Education that the data entry of all the forms was completed by 04.09.2000 and proof reading of the forms has to be completed within two days by the staff of the Education Department but till date this has not been completed. Therefore, it is clear that proof reading of the results was to be done in HARTRON itself by the officials of Director Primary Education and not by taking the records outside HARTRON. I may add here that infact, Sanjiv Kumar has put a following question to PW-56 Mohan Lal Gupta:

“Q Are you aware that it was Sardar Singh and Balram Yadav who had taken out the computerized lists from HARTRON on 25.08.2000 for purpose of proof reading?”

A I am not aware.”

In this question also, A-3 did not suggest that Sardar Singh and Balram Yadav had also brought the application forms of the candidates from HARTRON alongwith the lists. Consequently, I do not find any substance in the plea of A-3 that on 25.08.2000, Sardar Singh and Balram Yadav had taken the applications of the candidates from HARTRON and that in Prerna Guest House, they were checking the correctness of the particulars of the

HARTRON list by comparing the same with the application forms of the candidates.

Even from the evidence of Ramji Tiwari A-3/DW-2, it is clear that he himself had not seen the lists brought by Sardar Singh and Mohan Lal Gupta. Therefore, from his testimony the nature of the lists cannot be known whereas Sardar Singh, Balram Yadav and M.L. Gupta had seen those lists. They were aware of the proforma of the award lists since they were involved in the process of these selections almost from the very beginning.

The next question would arise that if they had all seen that the award lists have been taken out in the month of August-2000 and were also available with Sanjiv Kumar in Water Supply Guest House, Chandigarh in the last week of August-2000 and in Haryana Bhawan, New Delhi on 01.09.2000, then, why they did not object or pointed out this fact when the proceedings dt. 16.09.2000 were conducted in respect of de-sealing the almirah. I may point out that as per the proceedings dt. 16.09.2000 (Ext.PW16/A), Sardar Singh is not shown as a member of the six member committee. However, his signatures are present on it alongwith the signatures of members of the six member committee.

In cross examination by Ashok Kumar, Adv. (dated 13.10.2011), PW-31 Sardar Singh admitted that the de-sealing of almirah on 16.09.2000

was only an eye wash because award lists of 18 districts had been handed over to him by Director in August-2000.

In cross examination by Amit Kumar, Adv. (dated 02.11.2011), PW-31 testified that he did not ask the then Director as to what was the purpose of de-sealing the almirah when the award lists were already out because he had no authority to ask such question to the Director because he is only a Superintendent. He also stated that he could not dare ask regarding the said proceedings from the then Director as he was an ordinary employee of low level. I am of the opinion that this testimony is true because a subordinate staff will normally not meddle with work being done by his boss. Further, there is no evidence that Sardar Singh knew that the award lists had already been changed in the almirah. This fact should be seen in the light of the fact that he has stated that he found the almirah to be in sealed condition on 16.09.2000. Therefore, his signing the proceedings dt. 16.09.2000 appears to be an innocent act.

Now it is to be seen as to in what manner the almirah was sealed. PW23 Smt. Rajni Shekri Sibal, Sardar Singh and M. L. Gupta have all testified that she had sealed the almirah by wrapping a four meters cloth around it and by putting a seal impression of one rupee coin on the lock of the almirah. The key was also sealed in similar fashion in an envelope.

PW31 Sardar Singh as well as PW56 M. L. Gupta had testified that almirah was hidden behind a wooden screen in the room of Director Primary Education. The proceedings dated 16.9.2000 do not state that the almirah was sealed with the seal of one rupee coin. This type of seal can be broken open and be easily resealed. The almirah was in exclusive possession of Sanjiv Kumar (A3) and since he had handed over the award lists in August 2000 to Sardar Singh and M. L. Gupta and thereafter had delivered the copies of the award lists of desirous chairperson of the District Level Selection Committees, it stands proved that the original award lists were already out before 16.9.2000. In such circumstances, the burden is upon Sanjiv Kumar (A3) show as to why and in what circumstances the lists were out. Though it is true that the investigation is silent on this aspect but I have already stated that breaking of seals of the almirah and thereafter replacing new set of award lists in it was not a difficult job. I agree with the evidence of Sardar Singh that these were the fake proceedings. In fact it was also not difficult to desal the almirah and take out the original lists and thereafter resealing it with one rupee coin impression. Here, I would like to discuss a point raised by Durga Dutt Pradhan (A-38). It is argued by him as to why Rajni Shekri Sibal sealed almirah with one rupee coin impression. It was argued by him that it was so easy to break open this seal

and thereafter re-seal with one rupee coin's impression because one rupee coin is available everywhere. There is a point in this submission. However, PW-23 has explained it in her examination in chief. She testifies that she did it in this manner because she had earlier worked in Income Tax Department, where sealing of important documents is a normal process. It appears that at that time she was apprehensive, lest some other person may not change the award lists during her tenure. Further, she never thought that any IAS officer, who would be her successor, would himself become the part and parcel of the conspiracy for changing the award lists.

So far as the question of the sequence of meetings at guest house Chandigarh and Haryan Bhawan, New Delhi, as testified by PW56 is concerned, I would say that after such a lapse of long time, such confusion may arise but it does not mean that the witness is unworthy of credence. Minor variations in the testimonies of Sardar Singh, Balram Yadav and Mohan Lal Gupta have to be ignored because the power of remembering things differ from person to person.

In these circumstances following facts stand proved beyond doubt :

1. Almirah was duly sealed by Smt. Rajni Shekri Sibal, the then Director Primary Education.
2. Then almirah was placed behind a wooden screen in the chamber of

successor Director namely Sanjiv Kumr (A3) and was concealed from the view of officials and visitors entering his room.

3. Sanjiv Kumar (A3) was able to take out the original award lists from the almirah in the month of August 2000.

4. In the last week of August and on 1.9.2000, these original award lists were available with A-3 when he met concerned DPEOs of different districts in Water Supply & Sanitation Department's Guest House, Chandigarh and Haryana Bhawan, New Delhi.

101. Whether the Lists are Valuable Security, as defined u/s 30 of Indian Penal Code.

Valuable Security is defined as u/s 30 of the IPC which is reproduced as under:

“Valuable security’- The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.”

A perusal of this Section would show that the determining factor as to whether a document is a valuable security or not is as to whether such document creates or extinguishes a legal right. In the present case, the Supreme Court award lists are genuine award lists and each candidate has been given certain percentage of marks under the 'grand total.' These marks

have created a right of a candidate to stand at a particular position in the merit list. The fake list i.e. the Directorate List was prepared later on changing the interview marks of almost all the candidates and thereby changing the marks in their 'grand total.' thereby, the merit list (Ext.PW55/DW) which was prepared on the basis of those Directorate Lists, had the effect of changing the merit wise position of each candidate. In earlier part of my judgment, I have shown that there were candidates who must have been selected, had the Supreme Court lists be implemented. However, due to reduction of their marks in the Directorate Lists, they failed. Consequently, the candidates who would have failed in the Supreme Court lists must have been shown successful because of getting higher interview marks in the Directorate Lists. In these circumstances, the legal right of having been shown as a successful candidate has been extinguished in respect of many candidates and the candidates who would have failed in Supreme Court Lists have made it in the list of successful candidates in the Directorate lists. In this manner, many successful candidates have got a legal right to get an appointment when the appointments were given. On the other hand, the candidates who would have been successful, had the Supreme Court lists be implemented, were deprived of their rights, had their rights extinguished forever. Therefore, I have no hesitation in holding

that not only the Supreme Court Lists are valuable security, but, the Directorate Lists (even if the same are illegal being forged) are valuable security.

Here, I would like to refer to some case laws.

In **Rakesh Kumar Chhabra v. State of H.P., 2012 CRI.L.J. 354**, Himachal Pradesh High Court was dealing with a case where member of a Selection Board awarded the appellant '7' marks in interview and '51' marks in written test and thereby his total score was indicated to be '58'. On the basis of the options exercised by the candidates, the districts were allotted to the successful candidates and on the separate list of the interview board prepared for Bilaspur District, his interview marks were shown to be '13' and total marks written as '64' and thus he was included in the list of selected candidates. The legal question to be decided was as to whether such a second list is covered u/s 467 IPC , which deals with the forgery of a valuable security? It was decided by the Himachal Pradesh High Court as under:

*“16.Now, if the defence plea is not probabalized and hence it is not acceptable, there should be no difficulty in endorsing the finding of the trial Court that score of appellant Rakesh Kumar Chhabra has been shown to be higher than the actual score, while preparing final list Ext.PW3/K. However, the trial Court has fallen in error in holding appellants Surinder Mohan Katwal and Dr. Vidya Nath guilty of offences, falling in the definition of forgery. **They did not forge any document as such. However, they did prepare false record of the final result,** which act of theirs is punishable, under Section 218 of*

the Indian Penal Code. Their act also falls under the definition of falsification of record, punishable under Section 477-A of the Indian Penal Code. Also, they have committed the offence of criminal misconduct, punishable under Section 13(2) of the Prevention of Corruption Act, 1988, because by their illegal act, they got appellant Rakesh Kumar Chhabra appointed as Physical Education Teacher and thereby helped him obtain employment and resultantly, pecuniary advantage. All these acts could not have been committed by them without being approached by appellant Rakesh Kumar Chhabra, directly or indirectly. Thus, all three of them are guilty of offence of criminal conspiracy, punishable under Section 120-B IPC. **Their act also amounts to offence of cheating, because by making recommendation to the Government for appointment of appellant Rakesh Kumar Chhabra, act of deceit was committed and the concerned department was induced to appoint appellant Rakesh Kumar Chhabra as Physical Education Teacher, though he had, in fact, not been selected.**

17. For the foregoing reasons, appeal is partly accepted. Conviction of appellants Surinder Mohan Katwal and Dr. Vidya Nath for offences, under Sections 468 & 471 IPC is set aside. However, their conviction in respect of offences, under Sections 13(2) of the Prevention of Corruption Act and Sections 420 and 120-B IPC is maintained. They are also convicted of offences, under Sections 218 and 477-A IPC, in view of the aforesaid discussion.”

A perusal of this case law would show that no second list was prepared by the appellant. Only false marks of one candidate namely the appellant were increased in the another list prepared for allocation of districts to the candidates. Further, the second list in which the marks were enhanced was not the replication of the original list. Rather, it was a different list prepared for the purposes of the allotment of the districts to such candidates. Therefore, it was not a case of forgery, rather, it was held

that it was merely a case of falsification of the record and accordingly appellant was convicted u/s 218 and Section 477-A IPC.

It is necessary to mention here that Himachal Pradesh High Court has differentiated between 'forgery of a document' and 'falsification of the records'.

However, the facts of this case show that a fresh set of award lists which falls in the definition of 'false document' was prepared. I refer to the definition of making a 'false document', as defined u/s 464 IPC. As per this Section, who **dishonestly or fraudulently makes, signs, seals or executes a document with the intention of causing it to be believed that such document or part of document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed.**

In the present case, A-6 to A-62 had prepared the Directorate Lists and signed the same. Therefore, by signing the Directorate Lists, they caused it to be believed that these award lists were actually made by the Chairpersons and the members of the District Level Selection Committees, which they were not at the time of preparation of the second set of award lists. I refer to the explanation u/s 464 IPC which shows:

“A man's signature of his own name may amount to forgery.”

Illustration (a) to this Section is as under:

“(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.”

In the present case, the accused persons have signed the lists so that it may be believed that the award lists were signed by them in December-1999 when they were Chairpersons and the members of the District Level Selection Committees. Therefore, the second of award lists i.e. the Directorate Lists clearly falls under the definition of 'making false documents'. It has been argued by Ld. Defence Counsels for A-6 to A-62 that these accused persons had no dishonest or fraudulent intention, rather they were extremely helpless and had put their signatures on the severe pressure by the bureaucratic and political bosses. It is argued that there was no intention of causing wrongful gain or wrongful loss to any other person. Similarly, the act was not done with intention to the fraud. I totally disagree with this submission. Though, it is true that there is no evidence that they took any bribe from any candidate nor there is any evidence to show that they favoured any of his relatives but there is enough evidence to show that their political and bureaucratic bosses intended to cause wrongful gain to some candidates and wrongful loss to the other candidates. A-6 to

A-62 joined their intention. When these accused persons agreed to prepare and sign the award lists, their intention became one with the intention of their superior bosses and thereby they cause wrongful gain to certain candidates and wrongful loss to the remaining. The intention of the bureaucratic and political bosses in creating a new set of award lists was also to defraud the meritorious candidates of the earlier lists as well as the State of Haryana. While creating these award lists, A-6 to A-62 owned the said intention to defraud, which had percolated to them from their higher ups. Further, I refer to **AIR 1978 Supreme Court 1548** in which Supreme Court upheld the conviction of a person u/s 467 IPC against whom it was proved that **he had forged a letter of authority purporting to have been signed by P.A. to Vice Chancellor of Karnataka University, authorizing him to get the embossing seals in the name of Karnataka University.** It means that Supreme Court of India considered this forged authority letter to be a '**valuable security**' because it has created a right in his favour to get such seals prepared.

This issue was considered in *Ram Kamal Bezboruah v. Chandra Nath Kalita and others* 1971 CRI.L.J. 708 (Vol. 77, C.N. 206) Assam and Nagaland High Court. The facts in this case were that the Governing Body of a college suspended the Principal. However, the Principal alongwith

many others threatened the members of the governing body to execute a document in which it was written that suspension order of the Principal had been unconditionally withdrawn. The issue before the High Court was as to whether the document vide which the suspension order was withdrawn was a 'valuable security' within the meaning of Section 30 of the IPC. It was observed as under:

“the words 'valuable security' denote a document which is or purported to be a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or, whereby a person acknowledges that he lies under legal liability, or has not a certain legal right.”

The facts clearly show that the accused Principal was suspended by the Ad hoc Governing Body. This order clearly directed suspension of all his legitimate functions as a Principal. He would not be able to exercise his rights as a Principal while this suspension order was in force. If in this context an order is extorted from certain persons under threat and pressure to the effect that the earlier suspension order is non est., it is such a document which is a valuable security within the meaning of Section 30 of the Indian Penal Code. This later document gives him a right to function as a Principal which right had already extinguished or, at any rate, suspended by the earlier suspension order.”

6. In view we have taken of this document, it is not even necessary to refer to the two decisions of the Madras and Allahabad High Courts, respectively, cited at the Bar. The first decision is reported in AIR 1918 Mad 150 (G.S. Ramasami Iyer v. Emperor) where on difference between two Judges of that court, Oldfield, J. held that **even if the document at a later stage during the course of judicial proceeding is held to be invalid, that would not make the document as being not a valuable security for the purpose of Section 30 of the Indian Penal Code.** This view seems to have received support in a later decision in the Allahabad High Court, namely AIR 1926 All 57 (Ram Harakh Pathak v. Emperor). Without any further discussion of the question, we may say that we are in respectful agreement with the views expressed in the above two decisions. Even though the two members together could not legally and validly decide for the entire Ad hoc Governing Body, the document does not for that reason cease to be a valuable security under the law as it is obtained to create a right on the accused Principal to claim to be rid of the suspension order.”

In view of the above discussion, the status of Supreme Court list is that of a 'valuable security' and I hold that Directorate Lists are the forged 'valuable securities' despite its being illegal. At the cost of repetition, I state that it is not in dispute that on the basis of these Directorate Lists, the State wise merit list was prepared and appointments were given to the successful candidates.

Consequently, the offence of creating the Directorate Lists squarely falls under section 467 IPC.

102. CHEATING AND PECUNIARY ADVANTAGE

It has been argued on behalf of all the accused persons as to who has been 'dishonestly induced' and what property has been delivered to any person. Accordingly, it is argued that no offence u/s 420 IPC is disclosed.

Sh. S.K. Saxena, Adv. has argued that there is no evidence that any money/bribe or property was delivered to any accused. Therefore, no offence u/s 420 IPC is disclosed. I disagree with him that no evidence of any delivery of property to accused is available. Hence the offence is reduced to Section 418 IPC.

Similarly, he has also argued that what pecuniary advantage has been given to any person? It is argued that the salary which such favoured candidates are getting is not a pecuniary advantage to them, rather, they get

the salary in return of the work and duties performed by them during service. Accordingly, it is argued that no evidence u/s 13(1)(d) PC Act is disclosed. I have already reproduced para 16 of **Rakesh Kumar Chhabra Vs State of H.P. (above)**. These questions have been considered by Himachal Pradesh High Court withheld that the act of increasing marks also amounts to offence of cheating because by making recommendations to government for appointment of the appellant, the act of deceit was committed and the concerned department was induced to appoint the appellant, otherwise he would not have been selected. Therefore, I am of the opinion that State of Haryana has been dishonestly induced by such act of forgery of the award lists and by their implementation due to which jobs were given to undeserving candidates and deserving candidates failed to get the same. I may add here that the State Government of Haryana must be distinguished from the persons manning it. A person occupying a constitutional chair may come and go, but, the 'State' and its 'Government' continue forever.

So far as the pecuniary advantage is concerned, in the **Rakesh Kumar Chhabra's** case, Himachal Pradesh High Court has answered this question also. It was held that 'by their illegal act, they got appellant Rakesh Kumar appointed as Physical Education Teacher and thereby helped

him obtaining employment and resultantly pecuniary advantage. Here, I would add that had the Supreme Court lists been implemented, large number of the persons who have got appointment on the basis of Directorate Lists would have failed. Salary, ofcourse, is given in lieu of the performance of the duties, but, it must be kept in mind that the government job offers one of the finest pecuniary advantages in terms of salary, stability and security. If government job is provided to undeserving candidates, it is a sure pecuniary advantage to him. Had Supreme Court lists been implemented, such undeserving candidates would never have got this salary. I may compare it to a situation where the government gives a mining contract to a person ignoring the better bidders, the person getting such contract cannot be allowed to say that he would earn money because of the work he would be doing in the mines and that he has not gotten any pecuniary advantage from the government.

Sh. S.K. Saxena, Adv. had referred to *Alpana Dass Vs CBI, 132 (2006) DLT 85 New Delhi*. I have perused this case law. It was held that no pecuniary advantage was availed because the cheque in question could not be of any benefit to the respondent i.e the Insurance Company. I am of the opinion that this case law is not relevant as the facts in the case in hand are entirely different.

Ld. Special Public Prosecutor has drawn my attention to the order dt. 01.06.2012 of the High Court in Pushkar Mal Verm Vs. State (Crl. M.C. 2691/11) which is available on the judicial file. It is submitted by Ld. Special Public Prosecutor that in this judgment, Hon'ble Mr. Justice M.L. Mehta opined as under:

“ the words 'pecuniary advantage' used in Section 13(1)(d) of the P.C Act are of wide amplitude. It may not every time mean and have reference to taking of money in physical form. Providing employment to someone favourably against merit, may be due to relative of other tangible or intangible consideration, would also be a case of pecuniary advantage to both the employee and also the wrong doer. Both would in one way or the other be making pecuniary advantage, tangible or intangible.”

The aforesaid observations of Delhi High Court are apt answer to the point of pecuniary advantage as raised by Sh. S. K. Saxena, adv.

In these circumstances, I do not find any substance in the arguments of Ld. Counsels that the ingredient of pecuniary advantage as mentioned in Section 13(1)(d) of the P.C. Act is missing in this trial. Rather, enough evidence is on record to show that the scam was committed with this object in mind.

103. Whistle blower or Comrade in crime?

Sanjiv Kumar (A3) had stepped into the witness box as A3/DW9. The long testimony and the cross examination of this witness can be

summed up in following points :-

1. That he was posted as Director DPEP and after transfer of Smt. Rajni Shekri Sibal, he was given additional charge of Director Primary Education with an understanding that fresh lists are to be substituted in place of the original lists of JBT candidates.
2. That he met Om Prakash Chautala (A-4) on 10.7.2000 at 9:00 am over break fast and Om Prakash Chautala, the then Chief Minister Haryana, asked him that second set of lists was to be prepared afresh at earliest because his Government has got the clear majority of his own and there was no necessity to oblige the MLAs of the parties. Vidya Dhar (A-1) told him that mandate for DPEOs is that fresh lists were to be prepared accordingly to the list, which he (Vidya Dhar) would give to him, and the role of Sanjiv Kumar was to replace the list kept in the sealed Almirah and declare the results as per the second set of award lists.
3. In the last week of August 2000, Sanjiv Kaushal, Additional Principal Secretary to Chief Minister directed him (i.e. Sanjiv Kumar) to meet Vidya Dhar, the then OSD to Chief Minister. Accordingly he went to the said guest house, where Vidya Dhar (A1), Sher Singh Badshami (A2) and other officials were present and impressed upon him as to

why the almirah cannot be opened from the behind by using a blow torch. He also testified that he saw in the said guest house a handful person sitting in the main hall.

4. At the instruction of Sanjiv Kauashal, he went to Haryana Bhawan, New Delhi where he found a handful official of Primary Education Department. He met Sher Singh Badshami (A2) there. Sher Singh Badshami (A3) gave him a sheaf of papers relating to appointments of various JBT teacher posts under DPEP particularly in District Bhiwani and started interrogated him as to why recommendations sent in writing by Ajay Singh Chautala, Member of Parliament from Bhiwani, were not being implemented.
5. Sher Singh Badshami (A2) also made him to call up Ajay Singh Chautala and explained as to why his recommendees had not been appointed under DPEP. He also testified that he received 4 or 5 calls from Ajay Singh Chautala apprising the fact that it was very important to adjust at least 5 of the candidates recommended by him.
6. He took out the original award lists from the almirah on 16.9.2000 and sent the same to HARTRON for declaration of results.

His testimony has been strongly assailed by Vidya Dhar (A1), Sher

Singh Badshami (A2), Ajay Singh Chautala (A5) and Om Prakash Chautala (A4), whereas prosecution admits some facts testified by Sanjiv Kumar (A3) and disputes the veracity of the other facts. First of all this court will have to see as to whether Sanjiv Kumar (A3) is whistle blower? Answer is Yes and No. Yes, because had he not filed the writ petition before Supreme Court of India and had he not produced the original award lists, this scam would have never come to the light. No, because Sanjiv Kumar (A3) raised false pleas not only in Supreme Court of India but also at every stage during this trial. I have already discussed that his stand before Supreme Court of India and his pleas before the court during the entire trial that the Supreme Court lists are the fake lists and Directorate lists are the genuine lists stand falsified. Rather it has been proved beyond doubt that Supreme Court lists, which were in his possession were the genuine lists and Directorate lists are the fake lists. It also stands proved that result was declared and appointments were given on the basis of these fake Directorate lists. The grievance of Sanjiv Kumar (A3) during the entire trial had been that had CBI made him a complainant and cited him as a prosecution witness, he would have explained all the facets of the conspiracy. But I find no substance in this grievance because during investigation, he maintained the Supreme Court lists to be the fake lists and Directorate lists to be the

genuine lists. Sh. R. K. Handoo and Sh. I. D. Vaid, Ld. Special Public Prosecutors for CBI submitted that during investigation, CBI found him to be a “comrade in crime”.

Sh. S. K. Saxena, adv. has assailed testimony of A-3 on the ground that this witness is testifying falsely and had filed the writ petition in Supreme Court in retaliation to the criminal cases/FIR and departmental inquiries initiated at the instance of the Government of Haryana headed by Om Prakash Chautala. Sh. S. K. Saxena, adv. has drawn my attention to the testimony of Ct. Jogender Singh (A4/DW1), who testified that an FIR No. 293 was registered on 3.6.2003 at police station Sector-17, Chandigarh against Sanjiv Kumar (A3) on the complaint of one Paley Ram, Deputy S.P., Haryana Vigilance Bureau, under Prevention of Corruption Act. This FIR has been exhibited as **Ex.A9/DW1/1**. This witness proved another FIR no. 312 registered on 4.6.2002 at this police station against Sanjiv Kumar (A3) on the complaint of Paley Ram under Section 406/409/467/468/471/477A/120 IPC read with Section 13(1)(d) of Prevention of Corruption Act. Sh. S. K. Saxena, adv. submits that faced with lodging of FIR against him, Sanjiv Kumar (A3) cooked up a cock and bull story with a view to falsely implicate Om Prakash Chautala. Ld. Counsel has drawn my attention that the evidence of Sanjiv Kumar (A3) is not only in

contradiction to his writ petition on material facts but also is unworthy of credence in all respect. Sh. D. S. Kohli, adv. for A1 and Sh. S. K. Saxena, adv. for A2, A4 and A5 have drawn my attention to the cross examination of A3/DW9 dated 25.7.2012 wherein Sanjiv Kumar (A3) was confronted with the contents of writ petition no. 93/2003. In this cross examination, Sanjiv Kumar (A3) has admitted that he did not specifically implead Vidya Dhar (A1), Sher Singh Badshami (A2) and Ajay singh Chautala (A4) as respondents in the said writ petition. In cross examination dated 31.7.2012, Sanjiv Kumar was confronted with the fact that in writ petition the dates of events given by him are all false and that in this court Sanjiv Kumar (A3) has given different dates of the events. For example, it is pointed out by Sh. S. K. Saxena, adv. that in his writ petition he had mentioned that the fresh select lists were handed over to him on 28.9.2000 by Vidya Dhar (A1). Whereas Sanjiv Kumr (A1) has testified before this court that on 16.9.2000 the lists were taken out from the almirah and sent to HARTRON for compilation of the results. In his writ petition, Sanjiv Kumar (A3) mentions that he has stated that the almirah was opened on 7.10.2000, which is contrary to the record as well as his own testimony in which desealing proceedings are stated to have taken place on 16.9.2000. My attention has been drawn to the cross examination of Sanjiv Kumar (A3) dated 1.8.2012

in which it was pointed out to Sanjiv Kumar (A3) that there is no mention of “break fast meeting” with Om Prakash Chautala. It is argued that this is a very serious contradiction because for the first time before this court Sanjiv Kumar (A3) is coming out with the story of “break fast meeting”. It is argued by Sh. S. K. Saxena, adv. that Sanjiv Kumar (A3), who is the arch rival of Om Prakash Chautala has not spoken anything against Om Prakash Chautala in his examination-in-chief. The aforesaid “break fast meeting” is testified only in cross examination by Ld. Special Public Prosecutor. Accordingly, it is argued that the version of “break fast meeting” with Om Prakash Chautala stands discredited and it should not be read against him. Further, Sanjiv Kumar (A3) in his defence evidence has absolved Ajay Singh Chautala (A5) and has not imputed him any role. Ld. Counsel has reminded this court of the fact that Sanjiv Kumar (A3) in his evidence is only testifying that Ajay Singh Chautala (A5) had talked to him on 1.9.2000 and on other occasions pressurizing him for selecting certain JBT candidates for **DPEP** and not for the JBT candidates involved in the present case. It is pointed out that JBT teachers under DPEP are appointed on contractual basis under World Bank Project, which have no concern with the present selection. Sh. S. K. Saxena, adv. submits that although Ajay Singh Chautala (A5) does not admit even this allegation made by Sanjiv Kumar (A3) in his

evidence, but even if this version of Sanjiv Kumar (A3) is treated to be true, Ajay singh Chautala (A5) is in no manner stands connected with the offence/acts being done in Water supply Guest House in Chandigarh in last week of August 2000 and in Haryana Bhawan on 1.9.2000.

Sh. S. K. Saxena, adv. argues that if the testimony of Sanjiv Kumar (A3/DW9) is read carefully, it would become very clear that he has not stated anything incriminating against Sher Singh Badshami (A2). Ld. Counsel has taken me through the testimony of Sanjiv Kumar (A3) before this court. In his examination in chief, he testifies that Vidya Dhar (A1), Sher Singh Badshami (A2) and other officials were present in Punjab Guest House (i.e. Guest House of Water Supply and Sanitation pertaining to Punjab Government), when Sanjiv Kumar reached there. He does not allege anything against Sher Singh Badshami, rather he only testifies that someone stated as to why the almirah could not be broken open from behind by using a blow torch. He does not testify that Sher Singh Badshami (A2) had pressurized Sanjiv Kumar to change the award lists in this meeting. Sh. S. K. Saxena, adv. has drawn my attention to the further testimony of Sanjiv Kumar (A3) in respect of the meeting in Haryana Bhawan, New delhi. He testified that he came to the Old Wing of Haryana Bhawan first and was taken to the room of Sher Singh Badshami (A2). **Sher Singh Badshami**

(A2), who gave him a sheaf of papers relating to appointments of various JBT teachers to the posts under DPEP, particularly in District Bhiwani and also interrogated him as to why the candidates recommended by Ajay Singh Chautala (A5) were not being selected against the posts under DPEP. Therefore the role ascribed to Sher Singh Badshami (A2) by Sanjiv Kumar (A3) is only limited to his advice for appointing teachers in DPEP and nowhere it is alleged that Sher Singh Badshami (A2) was involved in creation of second set of award lists of regular JBT posts or had in any manner pressurized Sanjiv Kumar (A3) even in this meeting for changing the award lists of the regular JBT candidates.

Summing up Sh. S. K. Saxena, adv. submits that the brief evidence of Sanjiv Kumar (A3) regarding his “break fast meeting” with Chief Minister is unworthy of credence and that the testimony of Sanjiv Kumar (A3) in respect of Ajay Singh Chautala (A5) and Sher Singh Badshami (A2) does not connect them with the present crime.

Sh. D. S. Kohli, adv. for accused Vidya Dhar (A1) has strongly assailed the testimony of Sanjiv Kumar (A3). My attention has been drawn by Ld. Counsel to the testimony of A9/DW11 namely Subhash Chander, examined by Sanjiv Kumar (A3) as a defence witness, who has testified that a fake list was taken by him from Ajit Singh Sangwan DPEO Jind in an

envelope and had delivered the same to Vidya Dhar (A1) at his residence in Chandigarh. Ld. Counsel has addressed detailed arguments on the trustworthiness of this witness to which I fully agree for the reasons which have already been stated in earlier part of this judgement.

Sh. D. S. Kohli, adv. has drawn my attention to the cross examination of A3/DW9 (dated 16.8.2012) in which Sanjiv Kumar has admitted that the fact that he was unaware of what was sought to be done in Punjab Guest House (i.e. Water Supply and Sanitation Guest House belonging to Punjab Government) does not find mention in his writ petition.

My attention has been drawn to the fact that he did not mention in his Writ Petition that S.Y. Quraishi, the then Principal Secretary of the Chief Minister had asked him to cooperate in the matter of implementing the second set of award lists. He admitted that he did not state the fact that on receiving the message from Sanjeev Kaushal, he met Vidya Dhar-the then OSD to Chief Minister at Guest House of Water Supply & Sanitation Department, Punjab. My attention has been drawn to the fact that in his writ petition, he has not mentioned that at the directions of Sanjeev Kaushal on his mobile phone, he met Sher Singh Badshahi in Haryana Bhawan, New Delhi. Further, there is no reference of other persons namely Dharamvir or Jagtar in his writ petition. It is submitted by counsel for A-1

that attention of A-3/DW-9 was drawn to his statement u/s 161 CrPC recorded on 21.07.2005 in which he had stated that Abhay Singh Chautala had given him those lists whereas before this court he testified that bag of list was handed over by one Dharamvir Sihag. It is argued by Ld. Counsel for A-1 that in CM's Secretariat, A-1 was assigned the charge of "Printing & Stationary Department" and that on inquiry by the Vigilance Department, it was found that A-3 had committed various irregularities and eventually the case was registered against A-3. It is argued that this is the reason that A-3 had a grievance against Vidya Dhar and accordingly name of Vidya Dhar was mentioned by Sanjiv Kumar in his writ petition as the person who was actively involved in changing of the award lists. It is argued that the testimony of this witness is unworthy of credence so far as role of Vidya Dhar is concerned.

Sh. S.K. Saxena, Adv. and Sh. D.S. Kohli, Adv. have drawn my attention to the testimony of Sanjiv Kumar wherein he testified that **in the last week of August-2000, he was called by Vishnu Bhagwan and Prem Prashant and told that despite proposal to employ all available JBT teachers under DPEP, the government still wanted to change the award lists since appointment through State Government of JBT candidates would be on regular basis while employment under DPEP was merely**

contractual for a limited period, as per the World Bank Guidelines. He testified that both of them told him in clear terms that he being an officer of 1985 batch was due for promotion for Super-time scale in the month of January, 2001. He also testified that he was also called by S.Y. Quraishi, the Principal Secretary to the Chief Minister who asked him to cooperate in the matter of implementing the second set of award lists. A-3 testifies that otherwise he was told about the consequences in terms of denial of promotions etc. Ld. Counsels submit that when Prem Prashant-IAS testified before this court as PW-16, Sanjiv Kumar did not put the suggestion to that effect.

Ld. Counsels further submit that Vishnu Bhagwan was examined as defence witness by Ajay Singh Chautala (A-5). This witness (A-5/DW-1) testified that he was an IAS Officer of 1965 batch and was Principal Secretary to the CM (i.e. Om Prakash Chautala) and Sanjiv Kumar never made any complaint to him that he was being pressurized to change the JBT award lists nor it came to his knowledge that there was any move or attempt for getting the award lists changed. Ld. Counsels have drawn my attention to the cross examination on A-3. Sanjiv Kumar did not suggest it to Vishnu Bhagwan that he or S.Y. Quraishi had ever called him and asked him to change the award lists. In such a scenario, it is argued that the

testimony of Sanjiv Kumar that Vishnu Bhagwan-IAS and Prem Prashant-IAS had informed Sanjiv Kumar about the intention of the government to change the award lists is false.

I have considered the submissions of Ld. Counsels and to some extent I agree with their submissions.

First, I would like to discuss as to what is the evidentiary value of the evidence of an accused who testifies on oath in his defence?

104. **EVIDENTIARY VALUE OF THE EVIDENCE OF AN ACCUSED WHO TESTIFIES AS A WITNESS**

In this case, accused Sanjiv Kumar (A-3) has examined himself as a defence witness as A-3/DW-9. In his evidence, he has given his version of the events in detail. Accused Sher Singh has examined himself as a defence witness as A-23/DW-1. Accused Darshan Dayal Verma has examined himself as defence witness A-50/DW-1. Accused Sarwan Kumar Chawla has examined himself as A-60/DW-1. Accused Smt. Urmil Sharma has examined herself as A-61/DW-1 & accused Jogender Lal examined himself as A-62/DW-1.

Therefore, in all six accused persons themselves stood as defence witnesses. The prosecution as well as all the accused persons were duly given opportunity to cross examine these witnesses. While appreciating and

assessing the evidence of these accused persons, it is necessary to keep in mind the law laid down by the Supreme Court in *Tribhuvan Nath Vs The State of Maharashtra*, AIR 1973 Supreme Court 450. I reproduce para no. 29 & 30 of the judgment as under which sums up the law on this point.

“29. The first question is, whether the trial Judge was right in using the evidence given by accused 3 which he gave as a witness in his defence? The position with regard to such evidence is that when a person, accused along with others, voluntarily steps in the witness box as a witness in defence, he is in the same position as an ordinary witness, (see Peoples' Insurance Co. Ltd. v. Sardar Sardul, AIR 1962 Punjab 101 and Jibachh Shah v. The State, AIR 1965 Pat 331) and is therefore subject to cross examination by the prosecution counsel and evidence brought out in such cross-examination can be used against his co-accused. (See The King v. James Paul, 1920-2K.B. 183 at p. 185). If such a witness incriminates his co-accused the other accused, jointly tried with him, has the right to cross-examine him if he wants so to do. (Rex v. Hadwen 1902-1 K.B. 882 at pp 887-888). This has been the position in England after 1898 when accused persons were made competent witnesses. The same consequences must also flow after accused persons have been made competent witnesses for the defence under Section 342A of the code of Criminal Procedure. As counsel for the appellant informed us, since accused 3 volunteered to enter the witness box as a witness in his defence he was in fact cross-examined not only by the prosecution but also by counsel for the other accused. Of course, an accused person cannot be compelled to give evidence as a prosecution witness in view of the expression “in dis-proof” of the charges in Section 342A. But once his evidence as a witness for the defence is on record, under Section 10 of Evidence Act, 1872, evidence, as the communications between one conspirator and the other during the time that the conspiracy is going on and relating to implementing that conspiracy, is relevant evidence. The statements by

one accused to another and the evidence as to the acts done by him disclosing participation by the other accused in the conspiracy are also relevant. As to whether they merit reliance or not is another question depending upon their credibility."

*"30. As aforesaid, the evidence of Puransingh, Elavia and Mosin Burmawalla was held by the Trial Judge as accomplice evidence in that each of them had in one way or the other helped the accused in furthering their objectives. In such a case the duty of the court appraising the evidence clearly is to apply the double test as laid down in Sarwan Singh v. State of Punjab, 1957 SCR 953= (AIR 1957 SC 637). **The Court, therefore, has first to see whether the evidence of an accomplice is reliable, and secondly, even if it is so, whether it is corroborated in material particulars by other independent evidence, direct or circumstantial.** As Sarwan Singh's case 1957 SCR 953= (AIR 1957 SC 637) points out the test of reliability is the same as the one applied to all witnesses. Therefore, it does not mean that an accomplice's evidence cannot be relied upon unless it is totally and absolutely blemishless. In majority of cases such is not the case and in spite of some discrepancies and other such infirmities courts have often found it safe to act on the evidence of such witnesses. A case illustrating this proposition is to be found in Saravanabhavan v. State of Madras, AIR 1966 SC 1273 where the evidence of the approver contained certain discrepancies and **was also contradicted by the testimony of another witness and yet that evidence was held to pass the test of being credible and was accepted as it was also corroborated by other evidence.** Regarding the second test, that is, of the necessity of corroboration, such corroboration need not, on the one hand, be of every particular given by an accomplice, and on the other hand, of only minor particulars. The corroboration must be adequate enough to afford the necessary assurance that the main story testified by the accomplice can be reasonably and safely accepted as true. (Ramanlal v. State of*

Bombay, AIR 1960 SC 961)."

In **K. Hashim vs State of Tamil Nadu, Appeal (crl.) 185 of 2004 decided on 17th November, 2004**, Hon'ble Supreme Court again relied upon ***Tribhuvan Nath Vs The State of Maharashtra, AIR 1973 Supreme Court 450*** and observed as under:

"Although Section 114 illustration (b) provides that the Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated, "may" is not must and no decision of Court that he is unworthy of credit. It ultimately depends upon the Court's view as to the credibility of evidence tendered by an accomplice."

However, it was held that it is not necessary that there should be independent confirmation of every material circumstance, nor it is a requirement of law to seek corroboration to every detail. **All that is required is that there must be additional evidence rendering it probable that the story of accomplice is true and that it is reasonably safe to act upon it.**

On the touchstone of the aforesaid law, it is to be seen as upto what extent the testimony of A-3 should be accepted and upto what extent the testimony should be discarded. I would mention here that Sanjiv Kumar is the only person in this case who is aware of each and every fact as to how

the scam took place. The other accused persons may not know everything e.g. A-6 to A-62 may not know as to how the award lists were taken out from the almirah. Sanjiv Kumar is the only person who can tell as to on whose behalf he conducted such a big exercise and in what manner it was executed involving the Chairpersons and the members of the 18 District Level Selection Committees. Therefore, throwing his testimony altogether would amount to throwing baby out with bath water. At the same time, he is an accomplice and therefore his testimony has to be appreciated in an extremely careful manner and only those portions of his evidence should be accepted which are corroborated from the evidence and circumstances proved on record. As discussed in *Tribhuvan Nath Vs The State of Maharashtra, AIR 1973 Supreme Court 450*, it is not necessary that there should be independent confirmation of every material circumstance nor it is requirement of law to seek corroboration of every detail. All that is required is some additional evidence rendering the testimony of Sanjiv Kumar to be probable. In these circumstances, I would discuss the testimony of Sanjiv Kumar point wise.

1. Breakfast meeting with the Chief Minister:

In cross examination by Ld. Special Public Prosecutor, Sanjiv Kumar

admitted that he received a call from the office of Chief Minister to meet Om Prakash Chautala, the then Chief Minister immediately over a breakfast. He admitted that he met Om Prakash Chautala over breakfast and that this meeting took place when he took over the charge as Director-Primary Education or thereafter. He admitted that Om Prakash Chautala had made clear in this meeting that the second set of lists was to be prepared afresh at the earliest because after elections his government had the clear majority on his own and there was no necessity to oblige the MLAs of other parties. He admitted the case of the prosecution that Vidya Dhar (A-1) told him the mandate for the Director-Primary Education was that fresh lists were to be prepared according to the list which he would be giving and the role of A-3 was to replace the list kept in the sealed almirah.

Sh. S.K. Saxena, Adv. specifically asked a question as to whether he had mentioned in his writ petition that he had met O.P. Chautala on 10.07.2000 over a breakfast meeting. Sanjiv Kumar was very emphatic in the answer and stated that the date 10.07.2000 may or may not be correct because it is difficult to remember the date after such a long time. In cross examination dt. 01.08.2012, Sanjiv Kumar was specifically asked to see the copy of the Writ Petition no. 93/2003 Ext.Pw63/B-1 and to answer as to whether the fact of discussion with O.P. Chautala about the preparation of

the second list has been mentioned in this writ petition. Sanjiv Kumar answered emphatically that this fact has been mentioned in para 3 of the petition (D-64) where it is mentioned that after taking the additional charge of Director Primary Education, petitioner (i.e. A-3) was called by respondent no. 2 (i.e. Om Prakash Chautala) at his residence and was directed to call the members of District Level Selection Committees, prepare duplicate lists in accordance with the list of new names to be furnished by Vidya Dhar-OSD (i.e. A-1) and to finally replace the fake lists so prepared at the behest of O.P. Chautala with the original lists sealed in the godrej almirah. Although, the word 'breakfast meeting' had not been specifically used in the writ petition of A-3, but, A-3 in his writ petition had mentioned about this meeting with O.P. Chautala at his residence and the discussion which took place with the Chief Minister at that time. Therefore, there is no contradiction in the submissions of Sanjiv Kumar in his writ petition and his testimony before this court. I would like to see whether any corroboration to the fact that the entire scam was done at the instance of the Chief Minister, is forthcoming. However, that aspect would be considered by me while dealing with the role of Om Prakash Chautala (A-4).

Fact of giving the lists by Vidya Dhar-OSD to Sanjiv Kumar.

Sanjiv Kumar (A-3/DW-9) in his cross examination dt. 16.07.2012

by Ld. Special Public Prosecutor has testified that he got the award lists from Chief Minister's residence at Chandigarh. One official was holding a sac full of lists in the porch of the CM's residence and this bag was handed over to him with the direction to implement the said lists. He testified that this was done by the said official (namely Dharamveer Sihag) in presence of A-1. In his writ petition (Para-3), A-3 has averred that **Chief Minister asked him to call the members of the District Level Selection Committees and prepare duplicate lists in accordance with the list of new names to be furnished by Vidya Dhar-OSD to CM.** However the prosecution has proved that the false lists were prepared by active involvement of A-3. Therefore, one thing is clear that Vidya Dhar did not supply the already prepared fake award lists to A-3 at CM's residence, as testified by him in his evidence before this court. Therefore, I am not inclined to accept that Vidya Dhar had supplied the already prepared lists to A-3.

**Meeting at Guest House of Water Supply & Sanitation
Department of Punjab:**

A-3 has testified that in this guest house, Vidya Dhar (A-1) and Sher Singh Badshami (A-2) were alongwith other officials namely Jagtar Singh and Dharamveer etc. He testified that some persons were sitting in the hall

of the Guest House. In this meeting, a discussion started as to why it was difficult to take out the award lists and why the almirah could not be broken open from behind with the help of a blow torch?

Perusal of the Writ Petition Ext.PW63/B-1 (D-64) shows that A-3 has mentioned that on one occasion, sometime in the month of August/September at Panchkula and Haryana Bhawan, New Delhi all the members of the District Level Selection Committees were called and were directed to prepare fresh selection lists of 19 districts as per the wishes of Om Prakash Chautala and his colleagues. These Chairpersons and members of the District Level Selection Committees were made to sign on the fresh selection lists and these fresh lists were handed over to A-3 on 28.09.2000 by A-1 with a direction to substitute/replace the original lists with the fake lists. The fact that the DPEOs and the members were called at the Guest House of Water Supply & Sanitation-Department of Punjab stand fully proved by the evidence of the prosecution, which has already been discussed. However, his reference that this guest house was situated in Panchkula is incorrect. In fact, sufficient evidence has come on record in the testimony of Mohan Lal (PW-56) that it is situated in Chandigarh. Therefore, only the fact of meeting with Vidya Dhar and Sher Singh Badshami at Punjab Guest House can be safely relied upon.

His testimony regarding meeting at Haryana Bhawan, New Delhi.

Sanjiv Kumar testified that Sanjiv Kaushal-Addl. PS to Chief Minister had asked him to meet Sher Singh Badshami in Haryana Bhawan, New Delhi. Therefore, he went there and met him. He testified that he met Sher Singh Badshami in Haryana Bhawan, New Delhi and also found that some District Level officials of primary education were also there. Sher Singh Badshami gave him a sheaf of papers relating to the appointments of JBT teachers to the posts under DPEP, particularly in District of Bhiwani. I have already discussed that the testimony of Darshan Dayal Verma (A-50/DW-1) has proved that Sanjiv Kumar and Sher Singh Badshami had asked him to prepare a second award lists of the regular JBT candidates. Therefore, his testimony that Sher Singh Badshami asked him to appoint JBT teachers is correct, but, by a clever twist, he has stated that discussion of Sher Singh Badshami was in respect of appointment of the JBT teachers in DPEP. This addition of DPEP should be excluded from his testimony in view of the testimony of A-50/DW-1. Therefore, by deleting this twisted portion of this evidence, it stands proved that A-2 & A-3 had collected there for executing the conspiracy to create new award lists of candidates for regular vacancies of JBT teachers.

His testimony in respect of Ajay Singh Chautala

Regarding the telephonic calls with Ajay Singh Chautala on and around the period when the aforesaid meetings were held has not been controverted by A-5 in his cross examination. Therefore, the same has to be accepted to be true.

Sanjiv Kumar has testified that in Haryana Bhawan he had telephonic conversation with Ajay Singh Chautala. He testified that he received atleast 4-5 calls from Ajay Singh Chautala stressing the fact that it was very important to adjust atleast 5 of the candidates recommended by him for contractual teachers in DPEP, since they were very important members of his political party. I may point out that here again he has given a clever twist to the facts. The profuse evidence on record shows that in Haryana Bhawan, New Delhi, the DPEOs etc. were being called to create fresh award lists of regular JBT candidates and not of the contractual JBT teachers under DPEP. Therefore, the circumstances show that discussion between Ajay Singh Chautala and Sanjiv Kumar could be only in respect of the creation of the fake award lists of regular JBT teachers. In earlier part of the judgment, I have already shown as to how the candidates from District Bhiwani, from where Ajay Singh Chautala was Member of Parliament, were favoured.

I have already discussed that his testimony in respect of the fact as to which set of lists is genuine has proved to be false. Therefore, his strenuous effort during the entire trial as well as in his testimony to prove that he was only called at the guest house at Chandigarh and Haryana Bhawan, New Delhi but he had no role in creation of the award lists are a futile exercise. Falsity of his defence leads to only one conclusion that he was fully hand in glove with the other accused persons in creation of fake award lists. However there are some nuggets of truth in his testimony. If his writ petition and his defence evidence are perused carefully and compared with the overwhelming evidence led by the prosecution on various aspects, I find that although he has admitted all the major events which took place during the continuation of the conspiracy e.g. Presence of Vidya Dhar and Sher Singh Badshami at the guest house in Chandigarh, presence of Sher Singh Badshami in Haryana Bhawan, New Delhi, his discussion with Sher Singh Badshami and his telephonic conversation with Ajay Singh Chautala, but, he has very cleverly twisted the facts so that he could show to the court that he was not involved in the process of creating second award lists. It must be kept in mind that Sanjiv Kumar is an extremely intelligent person and he has very smartly tried to twist the facts but unfortunately he got exposed during the trial. At the same time, the

nuggets of truth gleaned from his testimony cannot be lost sight of. The above mentioned truthful facts would be considered while dealing with the role of each accused.

105. IS RAJNI SHEKRI SIBAL A COMPULSIVE LIAR?

Sh. S.K. Saxena, Adv. for A-2,A-4 & A-5 and Sh. D.S. Kohli, Adv. for A-1 have led frontal attack on Rajni Shekri Sibal. Sh. S.K. Saxena, Adv. has drawn my attention to the testimony of PW-23 wherein she admitted that she is a relative of Kapil Sibal, a prominent leader in Congress party and now a Cabinet Minister in Government of India. My attention has been drawn to her testimony in which she states that Kapil Sibal is her distant relative. Sh. S.K. Saxena, Adv. submits that this is a false evidence given by her as in her testimony she has admitted that her father in law and the father of Kapil Sibal are real brothers. Sh. S.K. Saxena, Adv. submits that still she testifies that Kapil Sibal is her distant relative. I do not find any substance in this argument. It is only an individual view as to whether one considers a relation to be distant or immediate. Normally, the immediate family is the spouse, children and parents in these fast changing modern times. Hence, I do not find that she is testifying falsely here. Sh. S.K. Saxena, Adv. has drawn my attention to her evidence in which she admits that O.P. Chautala was succeeded by Bhupinder Singh Hooda as Chief

Minister of Haryana. My attention has been drawn to her testimony where she testifies that her cousin brother namely Ashwani Shekri belongs to Congress party in Punjab. Sh. S.K. Saxena, Adv. has drawn my attention to her testimony in which she admits that her brother has a factory which manufactures bulbs in Himachal Pradesh. However, she evades to answer the specific suggestion that he was allotted an agency by the present Central Government of Congress for dealing in petroleum products. It is argued that her family background shows her close links with Congress party and that is why she is playing in the hands of Bhupinder Singh Hooda, the present Chief Minister and also the political rival of O.P. Chautala. It is submitted that due to this reason, she has testified falsely before this Court.

I have considered these submissions and I disagree. Had she been playing in the hands of Congress leaders, nothing stopped her from directly implicating the CM. She was an officer senior enough having an opportunity to meet the CM off and on. Had her intention been to implicate O.P. Chautala, she could have very well testified about the two meetings having been headed by O.P. Chautala himself but that was not the case. Furthermore, the witness is not eager to falsely implicate anyone. Infact, she does not have anything against Ajay Singh Chautala except the fact that he was present in both the meetings. A complete tone of her testimony

would show that she was not even anxious to implicate Ajay Singh Chautala by ascribing any role to him except his presence in those two meetings. Therefore, the allegation against her that she is playing in the hands of the Congress leaders namely Bhupinder Singh Hooda and Kapil Sibal does not hold. Some contradictions have been pointed out in her testimony which as per Sh. S.K. Saxena, Adv. and Sh. D.S. Kohli, Adv. discredit her evidence. I have perused her testimony and I find that she has been confronted with her previous statements namely the statement Ext.PW23/DC recorded during preliminary inquiry and the statements Ext.PW23/DD and Ext.PW23/DE recorded u/s 161 CrPC during the investigation. My attention has been drawn to the cross examination dt. 27.09.2011 by Sh. D.S. Kohli, Adv. for A-1 in which she had stated that she had told the investigating officer about the sequences and dates and that she had stated the date of sealing as 02.05.2000 or 25.05.2000. My attention has been drawn by Ld. Counsel to the aforesaid statements (i.e. Ext.PW23/DD & Ext.PW23/DE) in which no date is mentioned. My attention is drawn to the fact that she had not even stated to the CBI that she has sealed the almirah with the impression of coin of Re.1. My attention has been drawn that she was confronted with the aforesaid statements u/s 161 CrPc in which she has not stated that Prem Prashant had told her that Prem Prashant had told her

that the two meetings were convened by the Chief Minister. Ld. Counsels have drawn my attention to the Question No. 10 in statement Ext.PW23/DD u/s 161 CrPC where the Investigating Officer had **specifically asked as to who called her and told her to make the changes in the interview lists?**

My attention has been drawn that before this court she testified that the meeting at Haryana Niwas ended with the decision that Primary Education Directorate and Secondary Education Directorate would send list of names of the members of District Level Selection Committees and the roll numbers assigned to each district. However, in the statement u/s 161 CrPC, there is no mention of this fact. My attention has been drawn to the fact that in her statement u/s 161 CrPC, she has not stated that the almirah was sealed **soon after the first meeting**. It is pointed out that in her statement u/s 161 CrPC, she does not state that the **next morning after the first meeting, she met Vishnu Bhagwan and told him about what happened and requested for her transfer**. It is argued that before this court she testifies that one Nawab Singh was also present in the second meeting. However, name of Nawab Singh has not been referred to in her statement u/s 161 CrPC. Ld. Counsels have drawn my attention to her testimony before this court in which she testified that in the second meeting she was under misunderstanding that her point of view which she has told to Vishnu

Bhagwan had been conveyed and Prem Prashant had also agreed in Vishnu Bhagwan's office that these things they should not be doing and that she assumed that this was no longer the issue. Ld. Counsels pointed out that this fact is also not mentioned in her statement u/s 161 CrPC. It is submitted that her testimony before this court that it came as a surprise when she was asked about the progress of the work in respect of changing the lists does not find mention in her statement u/s 161 CrPC. She also testified before this court that possibly the new lists were present in the said meeting but this fact does not find mention in statement u/s 161 CrPC. It is submitted that no where in the said statement u/s 161 CrPC, it is mentioned that the meetings ended up by her stating that she would not do something like this. Ld. Counsels argued that she testified before this court that in the second meeting she stated that there would certainly be the photocopies of the actual lists with the members of the selection committees. It is argued by Ld. Counsels that most of the portion of her testimony is coming before this court for the first time to which there is no corroboration. It is argued that in her statement u/s 161 CrPC, she does not name Ajay Singh Chautala and only refers to one "BhaiSahab". It is argued that in such a situation, when the witness is improving upon her previous statements and even testifying in contradictions to some aspects, how it is possible to place

reliance on her testimony. It is argued by Sh. S.K. Saxena, Adv. that PW-23 has specifically testified that on the very next day of the first meeting itself in Haryana Niwas, she met Vishnu Bhagwan and told him about what happened and requested for her transfer. It is argued by Ld. Counsel that Vishnu Bhagwan has been cited as a prosecution witness, but, was given up by the prosecution. Despite this fact, Ajay Singh Chautala (A-5) examined him in his defence as A-5/DW-1. My attention has been drawn to the cross examination of Rajni Shekri Sibal (PW-23) dt. 27.09.2011 in which she states that she could name Vishnu Bhagwan as one of her mentors. Ld. Counsel argues that in view of this testimony, the evidence of Vishnu Bhagwan becomes of great importance. It is pertinent to note that Vishnu Bhagwan- an IAS officer of 1965 batch was Principal Secretary to the Chief Minister at the relevant time.

Sh. S.K. Saxena, Adv. has argued that for the purpose of filing reply to the writ petition no. 93/2003 of A-3, a notice was issued by the government to all the persons concerned including the Chairpersons and the members of the District Level Selection Committees as well as Rajni Shekri Sibal. However, she sent a cryptic reply (**Ext.PW46/54**) mentioning that the official records may be referred available in the office pertaining to this period, without disclosing anything about these meetings. It is argued that

it was the first opportunity for Rajni Shekri Sibal to state her entire version but she does not do so. It is submitted that this shows that her entire testimony before this court is a cock & bull story. I disagree with his submissions. She knew that during her own time, efforts of changing the award lists had started. Therefore, she had no confidence in the functionaries of the erstwhile government headed by Om Prakash Chautala. This is the reason that in any of her notings she has not referred about such efforts. In her cross examination dated 27.9.2011, she replied that she had no clue as to whom she should write to, since her higher ups were present in the said meeting. This explains as to why she evaded to give her version. Furthermore, the events mentioned in the said writ petition did not pertain to her own tenure as Director, Primary Education. Therefore, there was no need for her to narrate her own experience in the reply. Furthermore, had she done so, she would have further antagonized the politicians running the government of the day.

Now let me see the testimony of Vishnu Bhagwan (A-5/DW1).

He testified that Smt. Rajni Shekri Sibal was appointed as Director Primary Education and a note dated 20.6.2000 (Ex.PW16/J) signed by Smt. Rajni Shekri Sibal was sent through Prem Prashant to Minister of Education. The same was put before Chief Minister and the Chief Minister had approved the

further action, as suggested for preparation of the results through HARTRON. He testified that the file was personally carried out by Prem Prashant and Smt. Rajni Shekri Sibal on that date to him and that he cleared it after consulting the Chief Minister. He further testified that after clearing this file, Smt. Rajni Shekri Sibal stayed back and stated to him that she would like to be transferred from this post (i.e. the post of Director Primary Education). He further testified that she did not tell any reason for it. He told her that this request would be acceded to. After thus, she was ordered to be transferred, he proposed the name of accused Sanjiv Kumar (A3) to the Chief Minister to be posted in place of Smt. Rajni Shekri Sibal since he had been working in DPEP project and was aware of functioning of the Primary Education Department. On clarification by Sh. S. K. Saxena, adv, he explained that Prem Prashant and Smt. Rajni Shekri Sibal might have come earlier to 11.7.2000 and made such a request and that the file was cleared later on i.e. on 16.7.2000. He further testified that Smt. Rajni Shekri Sibal did not complain regarding any harassment or threat to her or about being pressurized to change the JBT award lists. Sh. S. K. Saxena, adv. argues that it must not be forgotten that this is the evidence of a person, who has been mentioned as her “mentor” by Smt. Rajni Shekri Sibal. Thus it is argued that her testimony stands falsified that soon after

the first meeting at Haryana Niwas, Chandigarh, she narrated the incident of Vishnu Bhagwa, IAS, the Principal Secretary to the Chief Minister while seeking her transfer. It is argued that Smt. Rajni Shekri Sibal did not mention or even indicate anything about this pressure in any her noting in departmental file i.e. D-40. She had in fact not even mentioned in her noting **Ex.PW16/J** dated 20.6.2000 that the almirah had been enclosed or wrapping in 4 meters of cloths around it. In these circumstances, it is argued that not only she made subsequent improvements in her testimony before this court, but also has testified various facts in contradiction to her earlier statement. However, her testimony does not get any support from any noting. It is argued that Vishnu Bhagwan, IAS (A5/DW1) has testified that generally a note is sent to a higher authority for compliance of an oral order if any. His testimony also proves that neither Smt. Rajni Shekri Sibal nor Prem Prashant nor Sanjiv Kumar have brought it to his notice that any pressure was being exerted for changing the award lists. In such circumstances, it is argued that the entire testimony should be thrown away being unworthy of credence. It is argued by Sh. S. K. Saxena, adv. that her evidence is a politically motivated evidence. It is argued that no reference has been given about the anonymous call received by her or offering of the 5% of the bribe money in her statement recorded during preliminary

enquiry. Sh. S. K. Saxena, adv. has drawn my attention to the fact that she had read her statement under Section 161 CrPC before testifying in the court. It is argued that it must be remembered that her statement under Section 161 CrPC recorded during preliminary enquiry had been duly signed by her **Ex.PW23/DC** and therefore she felt herself bound to testify on the same lines. It is argued that this is another reason due to which her statement should be read with great care and caution, because it creates a serious doubts in the veracity of her testimony. Ld. Counsel has drawn my attention to **Nathu Vs. State of Gujrat 1978 Crl.L.J. 448** in which full bench of Gujrat High Court criticized the practice of reading over police statements to witnesses before they enter the box. However it was held that whenever such practice is resorted, the judges should carefully consider the evidence given by the witness and decide upon its probative value in view of such facts and circumstances of each case. I have considered this submission and I agree that in such a situation the court must cautiously and critically examined worth of the witness. But at the same time it must be kept in mind that she is a highly placed officer and to believe that she would succumb to the pressure of CBI while testifying before this court would not be a correct position. So far as the improvements and contradictions pointed out by Ld. Defence Counsel are concerned, I may say

that none of them is material improvement or contradiction. An answer of a persons depends upon as to in what manner he is being questioned. I may point out that she was the person, who was directly affected by proposals for changing the award lists in two meetings. Naturally she would be more sensitive and more concerned about the entire happenings, hence her memory in respect of the persons involved and the conversations held in these meetings must be very clear even after lapse of such a long time. In her cross examination PW23 confidently stated that she possess ikonic memory. On clarification by this court, she explained that **an ikonic memory is one where a person remembers incidents and events which actually happened in true reality and that she remember even to the extent as to what clothes were worn by which person, if she puts her minds to that incident.** Experience shows that this type of memory is not uncommon. Therefore when she testifies about the events, her memory cannot falter. Sh. S. K. Saxena, adv. argues that it is strange that her memory of the events is not as clear when she made a statement under Section 161 CrPC in preliminary enquiry but it becomes more clear and she gave more facts when she makes a statement under Section 161 CrPC during regular investigation and when she appears before this court, her memory further enhances and she testifies many more facts before this

court. I disagree with this submission. She herself testifies in her cross examination that her answers depended upon the way in which the questions were asked by the Investigating Officer and thereafter in this court. I agree with her statement and I would point out that in examination in chief, she clearly state that Prem prashant had told her that the meetings were convened by Chief Minister. During her cross examination by Sh. D. S. Kohli, adv. for A-1 asked a specific question **as to whether she could give the topography of the location of the house where second meeting was held. She answered that she was perplexed as to why her vehicle and P. K. Mahapatra was asked not to follow the vehicle of Prem Prashant, which is not a norm. She was perplexed and she asked Prem Prashant where he was taking them.** This answer has come when a specific question was put to her in defence. Since Ld. Public Prosecutor had not asked this question, this version has not come in examination in chief. In view of this answer, this court put a question to her as to, **what reply Prem Prashant gave to her.** In answer to this question she stated **“he said it was to meet the CM”**. This shows that a person responds to the manner in which a particular question is asked. If such a question is not asked during investigation or during examination in chief, the answer would not come. Therefore it cannot be said that all these statements are deliberate

improvements. Smt. Rajni Shekri Sibal was directly affected by the proposal to change the award lists. Sensitivity to an event and sense of responsibility differs from person to person. Smt. Rajni Shekri Sibal was justifiably alarmed at such a proposal in two meetings and therefore she possesses better memory of the events than the other persons. Minor differences in the statements about minor facts do not make her evidence before this court doubtful. Regarding the fact as to what Prem Prashant had told her about the persons, who convened the meeting, I would say that this is a natural question, which must have been asked by Smt. Rajni Shekri Sibal when his superior officer namely Prem Prashant was taking her to the two meetings. Now let me see what Prem Prashant (PW16) testifies in this regard. In examination in chief, he is silent as to who had called these two meetings. However cross examination by Durga Dutt pradhan (A38), he testified that normally such meetings are not held at the residence of Vidya Dhar (A1). However he went there along with the Directors as he must have been informed on telephone by either house owner Vidya Dhar or **somebody else**. Further he testified that the message conveyed to him was that Ajay Singh Chautala (A5) would attend this meeting. Sh. S. K. Saxena, adv. specifically asked in his cross examination dated 13.12.2011 that at whose instance/orders he had attended the said meetings. PW16 testifies

that **as far as he recall, someone in CM's office had informed about the meetings.** These answers show that PW16 is bit evasive in answering these questions perhaps due to the lapse of memory but one thing is clear from his testimony that the instructions had come to him from CM's office. The only inference can be drawn from the reply is that these meetings were held at the instance of Chief Minister. In such circumstances, Smt. Rajni Shekri Sibal, who has all the reasons to have a specific memory about all the incidents is testifying truthfully as to what Prem Prashant had told her as to whom they are going to meet in the meetings.

Regarding “Bhai Saheb”, who has been stated by her in her statement under Section 161 CrPC having attended the two meetings, she testified that now she could tell that he was Ajay Chautala. She clarified that at that time, she did not know the name of said “Bhai Saheb”. This explains as to why in her statement under Section 161 CrPC, Ajay Singh Chautala was referred to as “Bhai Saheb”. I may mention here that she cannot forget the imposing presence of Ajay Singh Chautala in the said meetings, who by sheer presence, without speaking anything in those two meetings, conveyed in clear terms as to whom he was representing.

In fact the testimony of Smt. Rajni Shekri Sibal stands fully corroborated by the evidence of PW16 Prem Prashant and PW26 P. K.

Mahapatra. Therefore the allegation against her by Ld. Defence Counsels that she is compulsive liar is totally baseless. To be fare with Sh. S. K. Saxena, adv., I would say that he made it clear during arguments that it is not his personal opinion about her rather he has reached to this conclusion after perusing the testimony of this witness.

Regarding the evidence of Vishnu Bhagwan (A5/DW1), I would say that he is clearly concealing some material facts from this court. Smt. Rajni Shekri Sibal took over the charge as Director Primary Education on 27.4.2000. She testified that when she was asked for the first time to change the award lists in Haryana Niwas, Chandigarh and the very next day she met Vishnu Bhagwan and told him as to what happened and **requested for her transfer**. She was transferred on 11.7.2000. This means she remained posted only for about 2 and half months. As per her testimony she made request for transfer just after the first meeting in Haryana Niwas, Chandigarh. Vishnu Bhagwan (A5/DW1) admits this fact that Smt. Rajni Shekri Sibal had come to her and made a request for her transfer. In such circumstances, it would have been normal for Vishnu Bhagwan to inquire from Smt. Rajni Shekri Sibal as to why she is seeking after such a very short tenure. It is therefore believable that Smt. Rajni Shekri Sibal must have told Vishnu Bhagwan, the PS to CM, the reasons as to why she is seeking transfer

despite the fact that she had joined very recently. Therefore testimony of Smt. Rajni Shekri Sibal that she had narrated the incident to Vishnu Bhagwan while making the request for a transfer is reliable and a truthful version, whereas Vishnu Bhagwan is definitely concealing this fact from the court. The reasons are very much available in cross examination of Vishnu Bhagwan. He testified in cross examination by Sanjiv Kumar (A3) that after he retired, he was appointed Chairman, Haryana Bureau of Public Enterprises and thereafter Vice Chancellor of Guru Jambheshwar University. He also testified that he was on these posts for a little more than four years after his retirement. Sanjiv Kumr (A3) argues that these post retirements benefits come to Vishnu Bhagwan by the Government headed by Om Prakash Chautala, which is the reason that he is burdened with the obligations, which he had taken from Om Prakash Chautala (A4). I may point out here that a few accused persons had made serious efforts to implicate Vishnu Bhagwan as an accused in this case alleging him to be one of the main co-conspirator. Such requests/applications were disallowed by this court because a lack of evidence. However the way he concealed material fact as to why Smt. Rajni Shekri Sibal had sought her transfer gives credence to the allegations levelled against him by a few accused persons.

Nonetheless the testimony of Vishnu Bhagwan that he was not

aware of the scam in question and his testimony that Smt. Rajni Shekri sibal had not stated the reasons for her transfer is unworthy of reliance and has to be rejected.

Consequently the attempt of the defence to shake the credibility of Smt. Rajni Shekri sibal by putting Vishnu Bhagwan in their defence has miserably failed. I am of the opinion that she is not only a truthful witness but I find that she was the only person, who had enough courage to withstand the political pressures exerted upon them. Rest of the bureaucrats closed their eyes, turned their faces, crawled before the political bosses and many cooperated and aided in execution of the conspiracy.

106. Prem Prashant and P. K. Mahapatra

Sh. S. K. Saxena, adv. for A2, A4 and A5 and Sh. D. S. Kohli, adv. for A1 were at pains to show that the testimonies of Prem Prashant (PW16) and P. K. Mahapatra (A26) are unworthy credence. Both the witnesses have been confronted with their statements under Section 161 CrPC. Sh. D. S. Kohli, adv. has drawn my attention to the statement under Section 161 CrPC **Ex.PW26/DA** of Prem Prashant and submits that the pages in which there is reference to the two meetings at Haryana Niwas, Chandigarh and at the residence of Vidya Dhar (A1) have different font than the remaining pages. It is pointed out that the quality of these two pages is also different from the

other pages. I have perused this statement and find that page no.4 and 5 of the statement **Ex.PW26/DA** are in different font than other pages. Further these two pages are a bit yellowish. However it does not mean that these yellowish pages have been inserted by removing the original pages. Perusal of all the pages would show that paper and quality of all these papers are same except that two pages to bit yellowish. Further I also do not find substance in the submissions of Ld. Counsel for Vidya Dhar (A1) that these two pages were changed and that in the new pages, the reference of two meetings at Haryana Niwas, Chandigarh and at the residence of Vidya Dhar (A1) has been inserted. It is argued that it should be presumed that in original pages (which as per Ld. Counsel for Vidya Dhar were removed) there was no reference of these two meetings. I disagree with this inference drawn by Ld. Counsel for A-1. Had CBI indulged in this type of manipulation, they could have very well inserted the name of Ajay Singh Chautala in the meeting held in Haryana Niwas, Chandigarh. They could have also ascribed some role to Vidya Dhar (A1) in both these two meetings but the role ascribed to Vidya Dhar (A1) in these two meetings is only that of his attendance in the meeting at his residence.

Ld. Counsels have drawn my attention to the testimony of PW26 and submits that as per him, first meeting at the house of Vidya Dhar

(A1) was held and thereafter the meeting at Haryana Niwas, Chandigarh was held. I disagree with his submission of Ld. Counsels. In fact PW26 has testified that he did not have specific collection of such meeting **because a number of meetings are held in Haryana Niwas Chandigarh.** However he stated that there was another occasion where Sher Singh Badshami (A2) tried to make a such misadventure in an officer meeting and all the officers had told him categorically that nothing wrong in selection process would be permitted. Therefore this testimony shows that he had the faint recollection of this meeting. He has not stated specifically that this meeting was held after the incident at the house of Vidya Dhar (A1). Since PW26 had a faint memory of the meeting at Haryana Niwas, Chandigarh, he was not able to tell as to whether other persons like Ajay Singh Chautala and Vidya Dhar were present there or not. In cross examination by Sh. S. K. Saxena, adv., he could not recall as to what was time gap between the two meetings. He stated that he was unable to state so because a long time has passed.

Prem Prashant (PW16) and P. K. Mahapatra (PW26) were confronted with their statements under Section 161 CrPC on very minor points for example Sh. D. S. Kohli, adv. has confronted PW26 with his statement under Section 161 CrPC in which he has not stated that **“one person joined the meeting within 5 minutes inside that house, his**

identity I would say not aware at that point of time. Now I understand that person was Mr. Ajay Singh Chautala". It was also stated by PW26 in cross examination that he had not stated in his statement under Section 161 CrPC that **"after Investigating Officer called him quite some years back, I had tried to recall my memory. I had discussed the matter with the officers present with me in that meeting. I had subsequently seen the photographs and names in various newspapers and TV and my understanding is based on this"**. I may point out that in his statement before this court this witness has specifically mentioned that Ajay Singh Chautala had attended the meeting held at the house of Vidya Dhar (A1). In that reference he testified that one person joined the said meeting within 5 minutes from inside that house, but he was not aware of his identity at that point. Thereafter he testified that **"now I understand that person was Mr. Ajay Singh Chautala"**. This court clarified as to what he meant by now **"understand"** used by him in his testimony. In answer to this question he stated that after Investigating Officer called him, he tried to refresh his memory and had discussed the matter with officers present with him in that meeting. He had even seen the photographs of this person in various newspapers and TV and that his understanding is based on this. Therefore any details or explanation of a fact in examination in chief would not

amount to improvement even if it is not written in the statement under Section 161 CrPC. "Improvement" means that a person is trying to add something which is afterthought. Improvement would not include those things which a witness answers in response to a question is asked to him. In the evidence before this court a witness can give more details and can give explanations whenever asked by Ld. Public Prosecutor, Ld. Defence Counsel and the Court. Such further details of the incidents are not contradictions. Moreover non mentioning of such details or explanations in statement under Section 161 CrPC would not amount to "material omission".

One of the main point of assailing the testimony of PW-26 P.K. Mahapatra that in his statement u/s 161 CrPC he does not mention the name of Ajay Singh Chautala whereas when he testifies before this court, he specifically mentions his presence in the meeting at the house of Vidya Dhar (A-1). Sh. S.K. Saxena, Adv. has confronted PW-26 with his statement u/s 161 CrPC in the cross examination dt. 15.11.2011. P.K. Mahapatra (PW-26) has admitted that he has not named Ajay Singh Chautala having attended the said meeting. However, in his examination-in-chief he had made it clear that he had **specifically** seen the photographs and names in various newspapers, T.V. etc. and that is why he was testifying the presence of Ajay Singh Chautala in the said meeting. I may point out that in his statement

u/s 161 CrPC (Ext.PW26/DA), he has stated that in this meeting Vidya Dhar, the then OSD to the Chief Minister; Sher Singh Badshami-the then Political Advisor to the Chief Minister, Haryana and **2-3 other people were also present to whom he did not recognize.** This means that till the time of recording of his statement u/s 161 CrPC, he did not know about Ajay Singh Chautala, however, later on, after discussing the matter with the other officers present with him in the said meeting and also having seen the photographs and his name in various newspapers, T.V. etc., he was able to pin-point the identity of Ajay Singh Chautala as one of those persons who had attended the said meeting. Sh. S.K. Saxena, Adv. argues that the power of observation of PW-26 should have been tested by way of Test Identification Parade of Ajay Singh Chautala. I disagree with the submissions of Ld. Defence Counsel. The meeting at the house of Vidya Dhar was held, of which PW-26 had a very clear memory, it was not difficult for him to identify Ajay Singh Chautala as the same person on seeing his photographs in newspapers and T.V. Furthermore, he confirmed it from the other officers who had attended the said meeting. The Test Identification Parade would be required when a person had fleeting glimpses of an offender which was not the case here. Therefore, the testimony of this witness stating that Ajay Singh Chautala was one of the persons present in

the said meeting is truthful and it is also believable that the name of Ajay Singh Chautala does not find mention in his statement u/s 161 CrPC because **PW-26 came to know his name thereafter.**

It is argued that the testimony of PW-16 Prem Prashant has been assailed by Sh. D.S. Kohli, Adv. stating that his statement u/s 161 CrPC (Ext.PW16/DA) would show that 2 pages i.e. 4 & 5 have been changed. It is submitted that there is reference to these two meetings in these two pages. It is argued that it appears that PW-16 found himself bound by his statement u/s 161 CrPC which was shown to him before start of his evidence by the Investigating Officer and therefore testimony of PW-16 should be disbelieved.

I disagree with the submissions of Ld. Defence Counsel. PW-16 Prem Prashant-IAS has testified that he had retired as Chief Secretary, Government of Haryana on 31.08.2007. Therefore, when he testified before this court, he was not under government control. In fact, he was not even residing in State of Haryana because in his testimony he has given his address to be that of Dayal Bagh, Agra. Therefore, to say that he would be having a fear of security to his job while testifying before this court would not be correct. In cross examination by Sh. D.S. Kohli, Adv., his attention was drawn to the fact that the page no. 4 & 5 of his statement u/s 161 CrPC

is having font different from the remaining portion of the statement. However, PW-16 denied that these two pages have been interpolated by the CBI. I have already stated that Prem Prashant is a retired IAS Officer and is free from any government pressure. There is no reason why he would not point out to the court, if there is any interpolation in the statement u/s 161 CrPC. Had the Investigating Officer wanted to manipulate, nothing stopped him from mentioning the name of Ajay Singh Chautala having attended the first meeting at Haryana Niwas- Chandigarh in the statement u/s 161 CrPC of PW-16.

In nutshell, except minor variations, the testimonies of Prem Prashant and P.K. Mahapatra are same as found in their statements u/s 161 CrPC. Mentioning of the name of Ajay Singh Chautala by P.K. Mahapatra in his examination in chief has been explained by me as above, despite the fact that PW-26 does not mention the name of Ajay Singh Chautala in his statement u/s 161 CrPC. I would like to mention here that minor contradictions, improvements or discrepancies in the statements of witnesses are natural. In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, AIR 1983 Supreme Court 753(1)**, the Supreme Court traced the reasons for such contradictions etc. The same are reproduced as under:

“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape

is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

*(3) **The powers of observation differ from person to person.** What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.*

*(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. **They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.***

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

*(6) Ordinarily, **a witness cannot be expected to recall accurately the sequence of events** which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

*(7) A witness, though wholly truthful, is liable to be **overawed by the Court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events,** or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”*

The Supreme Court in this judgment further held that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, cannot be attached with undue importance. More so when the all important “probabilities-factor” echoes in favour of the

version narrated by the witnesses.

In **Teshsildar Singh & another v. State of U.P AIR 1959 Supreme Court 1012**, it was observed that normally the Investigating Officers record gist of the witnesses under section 161 CrPC which are sometimes perfunctory. This is another reason that all the details of facts/events do not appear in the statements u/s 161 CrPC.

I would add another reason in this regard. The answer of a witness depends upon as to in what manner the question has been put to him by the Investigating Officer or by the Public Prosecutor or by the Defence Counsel. The method and form of such question naturally differs from Investigating Officer to Public Prosecutor and to the Defence Counsel. The question asked on the same fact would elicit additional details if such question is put in a different form. Invariably, the details of the answer would change with a view that a particular question is suitably answered by such witness. The court cannot be oblivious of the psychological condition of the witness who is being examined and cross examined in the court of law, by which he feels a responsibility to come clean on the touch stone of the examination and cross examination especially when barbed questions are being shot at him challenging not only his veracity and trustworthiness but also directly and indirectly alleging that such witness was either mixed

up with some interested persons/vested interests or with the allegation that such witness was actually involved in commission of the offence as accomplice.

In the present case, a few things must be kept in mind. First, these witnesses were to testify against the powerful persons who are from one of the most important parties in the State of Haryana having formed its government when the offence was committed and thereafter it was the main opposition which may come to power any time. Though, Prem Prashant (PW-16) had already retired in the year 2007 and had settled in Agra, U.P., but, Rajni Shekri Sibal and P.K. Mahapatra were still having a long time to serve in Haryana Cadre. In such a situation, it cannot be presumed that they would testify before this court falsely simply at the instance of Congress party. Furthermore, it does not appeal to my mind that they will falsely testify before this court simply because they found themselves to be bound by their previous statements. I have yet to see a witness who had found himself to be bound by his statement u/s 161 CrPC. In this case itself, Sanjeev Kaushal-IAS (PW-1) turned hostile on a very material point despite the fact that he was confronted with his statement u/s 161 CrPC. I may point out that Sanjeev Kaushal on the date of his examination-in-chief before this court was working as Chairman & Managing Director, Haryana

Power Generation Corporation Ltd. in Haryana. If this witness had turned hostile, it have only one meaning that there was no pressure upon him from the Government of Haryana or Bhupinder Singh Hooda, the present Chief Minister of Haryana, who has been stated to be the main rival of Om Prakash Chautala. I further point out that none of these witnesses have testified against Om Prakash Chautala, the then Chief Minister nor any of them had made any statement u/s 161 CrPC ascribing him any role. Therefore, to say that these witnesses are playing in the hands of Congress leaders to demolish his political careers, is an argument which is not substantiated.

107. Role of Vidya Dhar (A-1)

Prosecution has alleged that Vidya Dhar (A-1) was OSD to the Chief Minister at the relevant time. PW-16 Prem Prashant-IAS who was Financial Commissioner Education and Languages at the relevant time testified that one meeting was held at Haryana Niwas-Chandigarh which was attended by him and probably by Vishnu Bhagwan-PS to CM, Vidya Dhar-OSD to CM and Sher Singh Badshami-Political Advisor to CM. Rajni Shekri Sibal-Director Primary Education was also present in the said meeting and a suggestion was made to change or replace the interview lists of JBT

candidates. However, it was categorically stated by him and Rajni Shekri Sibal that the results were in sealed cover and under lock & key and that it was neither legal nor ethical to consider those options. He further testified that second meeting was held at the residence of Vidya Dhar-OSD to CM and it was attended by him, Rajni Shekri Sibal (PW-23), Sher Singh Badshami (A-2), Ajay Singh Chautala (A-5) and the same subject was brought up that some candidates had not been given good marks and if the results could be changed. He testified that it was categorically stated by Rajni Shekri Sibal as well as by him that it was not possible. PW-23 Rajni Shekri Sibal who was the Director-Primary Education at that time testified that in first meeting which held on 02.05.2000 in Haryana Niwas, Chandigarh which was attended by Prem Prashant, PK. Mahapatra, Sher Singh Badshami and Ajay Singh Chautala. In the said meeting, the issue regarding the changing of award lists was discussed by Sher Singh Badshami at length in present of Ajay Singh Chautala. However, she and PK. Mahapatra told that it was not possible as the results were lying in sealed envelopes and under lock & key. In second meeting, also attended by Ajay Singh Chautala, they met Sher Singh Badshami at the residence of A-1, she was asked to change the lists. PK. Mahapatra (PW-26) is an IAS Officer and was posted as Director-Secondary Education, Haryana. He testified that

one day Prem Prashant took him and Rajni Shekri Sibal in his car to a house in Sector-7, Chandigarh and in that house Sher Singh Badshami, Vidya Dhar and 3 or 4 persons were present. In the said meeting, Prem Prashant explained the selection of JBT teachers and the position of selections on that day. Sher Singh Badshami had raised questions and stated that some people have got less marks in interviews and asked as to whether the interview marks of those persons could be increased. He as well as Prem Prashant and Rajni Shekri Sibal categorically told Sher Singh Badshami that this was an offence and no change in interview marks can be effected or permitted. He also testified that this meeting was also attended by Ajay Singh Chautala. PW-26 further testified that on another occasion, Sher Singh Badshami had tried to make such a misadventure in officer's meeting and officers present had told him categorically that nothing wrong in the selection process could be permitted.

It is argued by Sh. D.S. Kohli, Adv. that PW-26 P.K. Mahapatra does not state that Vidya Dhar (A-1) was present in first meeting held at Haryana Niwas. Similarly, Rajni Shekri Sibal (PW-23) has not stated that Vidya Dhar was present in the first meeting held at Haryana Niwas, Chandigarh. Therefore, it is argued that testimony of Prem Prashant (PW-16) that Vidya Dhar was present in the meeting at Haryana Niwas should be disbelieved.

Sh. D.S. Kohli-Adv. had drawn attention of PW-16 to his statement u/s 161 CrPC. On seeing his statement u/s 161 CrPC, he admitted that in his statement, the name of Vidya Dhar does not appear with respect to first meeting.

I have considered the submissions of Sh. D.S. Kohli, Adv. and I am of the opinion that a safer course would be to accept the plea of Vidya Dhar that he was not present in the first meeting.

In respect of the second meeting which was held at the house of Vidya Dhar, Sh. D.S. Kohli, Adv. has strongly denied this fact. However, he argues that even for a sake of arguments it is presumed that this meeting was held at his house, there is no evidence that he made any suggestion of any type regarding the changing of the award lists. He has taken me through the testimonies of PW-16, PW-23 & PW-26 and submit that none of the witnesses has spoken a word against Vidya Dhar. Therefore, he cannot be treated to be a part of the conspiracy. So far as the testimony of Sanjiv Kumar (A-3/DW-9) is concerned, it is clear that he has named Vidya Dhar in the writ petition and has testified against him before this court because he was aggrieved on account of the reason that Vidya Dhar was also dealing with the Department of Printing & Stationary and due to the irregularities committed by A-3 in the department, departmental action as well as

criminal cases was initiated against him. Furthermore, it is argued that even if the testimony of Sanjiv Kumar is believed to be true and it is presumed that Vidya Dhar was present in the Guest House at Chandigarh, still, A-3 does not speak even a single word against him. In nutshell, it is argued by Ld. Defence Counsels that though A-1 does not admit being the party of any meeting held at his residence or at the guest house at Chandigarh, but, even if the same is treated to be true, this evidence does not implicate A-1 in the present crime. Sh. D.S. Kohli, Adv. has drawn my attention to the testimony of the defence witness Satbir (A-1/DW-1) and submits that even his close relatives namely Satbir, Sharda Devi, Pradeep Kumar and Ghansham were not selected. It is argued that had Vidya Dhar been a part of the conspiracy and were involved in creation of the fake award lists, he must have ensured that his own relatives are selected.

Ld. Counsels for A-1 have has taken me through the relevant paragraphs of *State Vs Nalini & Others (1999) 5 SCC 253*; *Ajay Aggarwal Vs Union of India and Others (1993) 3 SCC 609*; *Kehar Singh and Other Vs State (Delhi Administration) (1988) 3 SCC 609*; *Sardul Singh Caveeshar Vs State of Bombay AIR 1957 SC 747* & *Sardar Sardul Singh Caveeshar Vs State of Maharashtra [1964] Vol. 2 Supreme Court Report 378* and argued that while ascertaining the role of A-1, following points

should be kept in mind:

1. Those who form intent-become conspirators.
2. Those who do not form intent and drop out are not conspirators.
3. Mere knowledge of conspiracy does not make a person a conspirator.
4. Criminal conspiracy cannot be inferred from mere official discussion or from simple meeting of two persons.

I have considered the submissions of Ld. Counsels and I do not agree with them that PW-16, PW-23 & PW-26 are unreliable simply because there are some minor variations in their testimonies. In fact their testimonies are not only truthful but worthy of credence, though their testimonies may suffer from lapse of time. It must be kept in mind that the incident had taken place in the year 2000 and investigations started after three years. These witnesses came to testify before this court after more than ten years of the incident. These three witnesses are sure about these two meetings. However as an abundant caution, I reject the testimony of PW-16 regarding the presence of A-1 in the first meeting. Out of these three witnesses, I would say that the memory of these incidents were very fresh in the mind of Smt. Rajni Shekri Sibal. Reasons is simple. It was she, who was asked to replace the award lists. She was more sensitive to the issue and this is the reason that after the very first meeting at Haryana Niwas,

Chandigarh, she enclosed the almirah containing award lists with 4 meters of cloth and put a seal on it. The conduct of Vidya Dhar (A1) in the whole affairs, even if he is silent in the second meeting at his house has to be considered in backdrop of all circumstances. First of all a meeting had taken place at Haryana Niwas, New Delhi in which political advisor to the Chief Minister had asked Smt. Rajni Shekri Sibal to change the award lists. Smt. Rajni Shekeri Sibal (PW23) has testified in her cross examination dated 14.9.2011 that Prem Prashant on both the occasions (i.e. when first meeting in Haryan Niwas, Chandigarh and second meeting at the residence of Vidya Dhar was held) stated that Chief Minister Haryana had convened these meetings. In cross examination by Sh. D. S. Kohli, adv. for Vidya Dhar (A1), she testified that they commuted in the official vehicle of Prem Prashant onwards Sector-7, (i.e. the address of Vidya Dhar) and that **their vehicles wee asked not to follow**. She also testified that she was perplexed as to why her vehicle and P. K. Mahapatra's vehicle were not asked to follow the vehicle of Prem Prashant, which is not a norm. She was perplexed and she asked to Prem Prashant as to where he was taking them. On court question, she answered that he (i.e. prem Prashant) told that it was to meet the Chief Minister. I may point out that role of Vidya Dhar (A1) should be seen in the light of the fact that although the Chief Minister was

not present in this meeting but his OSD (i.e. Vidya Dhar) was present and this meeting was held at the house of Vidya Dhar (A1). Any official meeting at the residence of a public servant are not the norm. I may point out that Smt. Rajni Shekri Sibal was confronted with her statement under Section 161 CrPC, wherein she had not stated that Prem Prashant had told her that the meeting was convened by the Chief Minister. However it does not make any difference because answers would come in the manner the questions are asked. I may point out that PW16 Prem Prashant, in his cross examination (dated 20.10.2011) by Vidya Dhar (A1), has testified Smt. Rajni Shekri Sibal had travelled in his official car (i.e. of Prem Prashant) to the residence of Vidya Dhar (A1). Answering a question asked by accused Durga Dutt Pradhan (A38), PW16 testified that Vidya Dhar (A1) was an HCS officer much junior to him (i.e. PW16) but since the staff of the Chief Minister calls the meetings on behalf of Chief Minister, therefore even if OSD is junior to him, he can call such meetings. He also stated that the meeting is called by Principal Secretary to CM or OSD to CM. In his cross examination dated 19.10.2011, PW16 testified that in normal course no meeting should take place at the house of Vidya Dhar (A1). Therefore the fact that Vidya Dhar (A1) was the OSD to the Chief Minister and such a meeting asking for changing the award lists was held at his residence, which

was also attended by Sher Singh Badshami (A2), the political advisor to the Chief Minister as well as by Ajay Singh Chautala (A5) speaks volume about the role of Vidya Dhar (A1). He did not speak but he stood as the reminder of the fact to all the concerned that he represents the Chief Minister. “Silence” can be sometimes more potent than the 'words'. An 'omission' sometimes is more lethal than 'the act'. PW16, PW23 and PW26 have testified that they made it clear that changing the award lists is illegal but what Vidya Dhar (A1) did. Did he oppose such a proposal like Prem Prashant, Smt. Rajni Shekri Sibal and P. K. Mahapatra? Further such a senior officers are coming to his residence despite his being a junior officer and in his presence the discussions of changing the award lists is being carried coupled with the fact that the vehicles of Smt. Rajni Shekri Sibal and Prem Prashant are asked not to follow the vehicle, of Prem Prashant in which all of them were travelling, smell of a conspiracy, which was in the process of execution. Here I may refer to the testimony of Smt. Rajni Shekri Sibal (PW23), who testified that when they were returning from the house of Vidya Dhar (A1) in the official vehicle of Prem Prashant, **“there was total silence”**. This was the impact of the meeting held at the residence of Vidya Dhar (A1). Vidya Dhar (A1) has not explained as to why this meeting was held at his residence and what had transpired behind the scene just

prior to holding of this meeting in which the officers, who were much senior to him, were called at his residence. It has been argued by Ld. Counsels for Vidya dhar (A1) that after this meeting Vidya Dhar (A1) had no role to play and that the evidence of Sanjiv Kumar (A3/DW9) in this respect is false. I may point out that the name of Vidya Dhar (A1) has been mentioned prominently in the writ petition by Sanjiv Kumar (A3). Though the role attributed to Vidya Dhar (A1) by Sanjiv Kumar (A3) that he had delivered the already prepared lists to Sanjiv Kumar (A3) has been held to be false but I would say that from his testimony it stands proved that Vidya Dhar (A1) remained actively involved even after the meeting held at his house. Sanjiv Kumar (A3) in his evidence has testified that when he was called in Punjab Guest House, Vidya Dhar (A1), Sher Singh Badshami (A2) were also present along with the other persons in a room and were having tea. In this meeting also there was a discussion about changing the lists. He also saw a handful persons were sitting in the main hall. This testimony about the presence of Vidya Dhar (A1) in the guest house at Chandigarh is worthy of credence. In fact Ld. Counsel for A6, A7 and A8 have strongly argued that these accused persons were called to the guest house and that Sanjiv Kumar (A3), Vidya Dhar (A1) and Sher Singh Badshami(A2) had asked them to prepare a second award lists and gave instructions as to how these lists

were to be prepared. My attention has been drawn by Ld. Counsel to the statement under Section 313(5) CrPC of Smt. Prem Bahl, who has stated that all the three were sitting in the same room and they could successfully create an atmosphere of intimidation and that Sanjiv Kumar gave her a list of roll numbers of all the categories hand written on a narrow strip of paper and instructed him verbally re-allot the interview marks to those roll numbers. I would point out here that submissions of Ld. Counsel for A6 to A8 cannot be considered against any other accused persons because these facts were not put by them in cross examination of A3/DW9. But the fact that the Sanjiv Kumar (A3) had attended the said meeting stands proved from the testimony of M. L. Gupta (PW56), who has testified that Sanjiv Kumar (A3) had gone to the Water Supply Guest House, 1256, Sector-8, Chandigarh and some DPEOs had also attended the said meeting. Those DPEOs were told that in case they were not having award lists, they could take from him but everybody was having the copy of award lists. PW56 further testified that they were called by Sanjiv Kumar in a room, **in which some other persons were also present and the said DPEOs were briefed.** Thus the testimony of Sanjiv Kumar (A3) as to who were present in this meeting has to be believed. None of the chairpersons and the members of the District Level Selection Committee, who had attended the said meeting

had denied in cross examination the testimony of Sanjiv Kumar (A3) regarding his presence and the presence of Sher Singh Badshami (A2) as well as Vidya Dhar OSD. Therefore non cross examination of A-3/DW9 on this point by the concerned DPEOs and the members is sufficient corroboration to the truthfulness of Sanjiv Kumar on this point. Therefore it stands proved that Vidya Dhar (A1) was involved in the present conspiracy from the very beginning and was not only instrumental in pressurizing Smt. Rajni Shekri Sibal to change the award lists at his residence but also actively participated in the meeting where many chairpersons and the members were called at Water Supply Guest House, Chandigarh and were directed to prepared a second award lists. I would cite **Kehar Singh Vs. State AIR 1988 SC 1883**, where the evidence against Kehar Singh that they were talking on the roof a few day before the assassination of Mrs. Gandhi. Kehar Singh came to her house and was closet with Beant Singh on the roof for about 18/15 minutes. There was hush talks between them, which could not be over heard by Smt. Bimla Khalsa (the prosecution witness) as she was in the kitchen. This evidence was considered to be a very strong evidence against Kehar Singh whose conviction was upheld by the Supreme Court of India. In the present case, although there is no evidence that Vidya Dhar (A1) was secretly discussing the matter with other

persons but there is direct evidence of his involvement in the meetings where such efforts to replace award lists were being made. Inference can be drawn that Vidya Dhar (A1) had some conversions and discussions prior to both these meetings namely at his residence with Smt. Rajni Shekri Sibal and thereafter at the Water supply Guest House. Why he was present in those meetings can be explained by only one answer i.e. he was one of them main conspirator involved in the present conspiracy. I may add here that Vidya Dhar was in fact involved in this conspiracy soon after the taking of vacancies of JBT teachers out of the purview of Staff Selection Commission. This aspect would, however, be discussed separately.

108. Sher Singh Badshami (A2)

Sh. S. K. Saxena, adv. for this accused has argued that only evidence against Sher Singh Badshami (A2) is the testimonies of PW16, PW23 and PW26. Apart from it, an entry in visitors register showing his presence in Haryana Bhawan on 1.9.2000 have been led by the prosecution. Evidence of Darshan Dayal Verma (A50), who stepped into witness box in his defence as A50/DW1 has also testified that he was instructed to visit Haryana Bhawan, New Delhi on 1.9.2000, where Sanjiv Kumr (A3) and Sher Singh Badshami (A2) had asked him and pressurize him to prepare a second award list. Moreover Sanjiv Kumar (A3/DW9) has also testified that Sher

Singh Badshami (A2) was present in Haryan Bhawan, New Delhi. It is argued by Sh. S. K. Saxena, adv. that although he does not admit the testimonies of the aforesaid witnesses. However even if it is presumed to be true, no offence is disclosed against him. It is argued that Sher Singh Badshami (A2) is a lay politician and does not have much understanding of official and legal matters. His only job as political advisor to the Chief Minister is to inform the Chief Minister about the feelings and demands of the public. It is argued that Sher Singh Badshami (A2) was only expressing a genuine concern to Smt. Rajni Shekri Sibal that some candidates have not been able to get good marks despite their good qualifications and whether some favour could be done to them by the Director Primary Education. It is argued that it was a plain and simple request, which does not have any conspiratorial tone nor it means that he pressurized them to do that act. As soon as Prem Prashant, Smt. Rajni Shekri sibal and P. K. Mahapatra stated that it could not be done, matter ended there. It is argued that Sher Singh Badshami (A2) had examined one defence witness namely Mukesh Kukmar Sethi (A-2/DW-1) who has testified that the room was booked in the name of Sher Singh Badshami but he (i.e. the witness) along with his one friend namely Swarnjeet @ Sammy had stayed in the night of 31.8.2000. Sh. Anil Rathi, adv., who is assisting Sh. S. K. Saxena, adv., added here that this

witness has testified that even in the visitors register the friend of this witness had put his signature, which do not tally with the signatures of Sher Singh Badshami (A2) and had requested this court to compare the signatures of Sher Singh Badshami (A2) on his statement under Section 313 CrPC and the signatures in the visitors register. I have acceded to this request and has compared both the signatures. I find that there is no difference in both of them except that the signatures on the visitor register are just initials but formation of “S” and “m” are similar to each other. Therefore I am not inclined to accept the testimony of this witness that he had stayed along with Mr. Sammy in this guest house on the said day. Even if this testimony is believed, the witness testified that he had vacated the house at about 8:30am in the morning on 1.9.2000. The meeting at the Haryana Bhawan should have started at about 10:00 am because the DPEOs and the members had to come from Haryana and after vacation of the room by this witness, Sher Singh Badshami (A2) could have used this room. The evidence of defence witness namely Mukesh Kumar Sethi (A2/DW1) does not come to the rescue of Sher Singh Badshami (A2) because in cross examination by Sh. I. D. Vaid, Ld. Special Public Prosecutor, he left Haryana Bhawan, New Delhi around 8:30 am on next day i.e. 1.9.2000. On the other hand, the entry in the visitor register of Haryana Bhawan, New Delhi

proves the prosecution case that Sher Singh Badshami (A2) had stayed in Haryana Bhawan, New Delhi on 1.9.2000. This entry has been proved by clerks posted in Haryana Bhawan, New Delhi namely Kishan Chand (PW25) and Satbir singh (PW45). Further, there is direct evidence of D. D. Verma (A50/DW1). He was posted as District Primary Education, Rewari in December 1999 and was the Chairman of District Level Selection Committee along with other members namely Saroj Sharma (A51) and Tulsi Ram (A52) and had conducted the interview of JBT candidates from 1.12.1999 to 3.12.1999 for district Rewari only for three days. On 1.9.2000 he reached at Haryana Bhawan, New Delhi in compliance to a telephonic message received from Shadi Lal Kapoor PS to Sanjiv Kaushal, Additional Principal Secretary to CM through DEO Fatehabad. He testified that he reached Haryana Bhawan, New Delhi at about 2:00 pm and met Sanjiv Kumar (A3), who told him (D. D. Verma) that he was late and necessary instructions had been given to DPEO, Rewari, who had already left, regarding the preparation of second set of award lists. This accused testified that when he showed hesitation to prepare a second set of award lists, Sanjiv Kumar (A3) threatened him of dire consequences and took him to a room where Sher Singh Badshami (A2) was sitting. He testified that both of them said that these were the order of State Government of Haryana

and that he had no option to defy the same otherwise he would have to face the consequences. This witness was thoroughly cross examined by sh. S. K. Saxena, adv. Sh. S. K. Saxena, adv. has drawn my attention to the cross examination on behalf of Sher Singh Badshami (A2), wherein A50/DW1 testified that he never knew Sher Singh Badshami (A2) prior to the visit to Haryana Bhawan, New delhi and that Sanjiv Kumar had told him the name of the said person as Sher Singh Badshami (A2). It is argued that this witness is not sure as to whether the person sitting in the Haryana Bhawan, New Delhi was Sher Singh Badshami (A2) himself or not. I disagree with this submission of Ld. Counsel. I may point out that I had sought clarifications from this witness on this point on which he clearly identified Sher Singh Badshami (A2) present in the court on that date as the same person, who he had met in Haryana Bhawan, New Delhi. I have carefully perused the testimony of this witness. I have already stated that though he is an accomplice, but he has come to the court very fairly and truthfully and has not tried to shift his blame on any other person and has not exaggerated the role of other accused persons. I have already stated that prosecution has led sufficient evidence to prove that the Chairpersons and the members had been called to Haryana Bhawan, New Delhi on 1.9.2000 and Sher Singh Badshami (A2) and Sanjiv Kumar (A3) were very much present in the said

meeting. The evidence of this accused further gets corroboration from the testimony of Sanjiv Kumar (A3/DW9) himself, who has testified that he had visited Haryana Bhawan, New Delhi and met Sher Singh Badshami (A2).

The cumulative effect of all these evidence is that Sher Singh Badshami (A2) had first tried to pressure Smt. Rajni Shekri Sibal in a meeting held in Haryana Niwas, Chandigarh to change the award lists. A second attempt was made by him at the residence of Vidya Dhar (A1) by pressurizing Smt. Rajni Shekri Sibal to change the award lists. Later on Sanjiv Kumar (A3) was able to take out the original award lists from the almirah. Testimony of Sanjiv Kumar (A3/DW9) prove that Sher Singh Badshami(A2) was present along with (A1) and (A3) in the guest house of Water Supply and Sanitation Department of Punjab at Chandigarh, where as per M.L. Gupta (PW-56) some Chairpersons and the members were asked to take the copy of award lists. Sher Singh Badshami(A2) took active interest in pressurizing and threatening the other chairpersons and the members of the District Level Selection Committees on 1.9.2000 in Haryana Bhawan, New Delhi, as per A-50/DW-1. Therefore a complete chain of evidence is available on record about his main and active participant in the entire conspiracy from beginning to the end. I may add here that in fact he was involved in the process of selection from the very beginning when the

vacancies of JBT teachers were taken out from the purview of Staff Selection Commission. However I will deal this aspect later on.

109. **Ajay Singh Chautala (A5)**

I have already discussed that Rajni Shekri Sibal, P. K. Mahapatra and Prem Prashant are truthful witnesses and worthy of credence. Sh. S. K. Saxena, adv. for accused Ajay Singh Chautala (A5) argues that Smt. Rajni Shekri Sibal (A23) has testified that in the first meeting held on 2.5.2000 in Haryana Niwas, Chandigarh, Prem Prashant, P. K. Mahapatra, Sher Singh Badshami and a gentleman called **(Bhai Sahab i.e. Ajay Singh Chautala)** were present in the said meeting and the issue regarding the changing of award lists was discussed by Sher Singh Badshami (A2) and Prem Prashant initially and Ajay Singh Chautala (A5) came later on after 15-20 minutes and the issue kept being discussed at length. Sh. S. K. Saxena, adv. has drawn my attention to the testimony of Pw16 Prem Prashant, who testified in his examination in chief that a meeting was held at Haryana Niwas, Chandigarh, which was attended by him and probably by Vishnu Bhagwan PS to CM. Vidya Dhar OSD and Sher Singh Badshami the political advisor to the Chief Minister. Smt. Rajni Shekri Sibal, Director Primary Education was also in the said meeting. It is submitted that PW16 Prem Prashant does not state that Ajay Singh Chautala (A5) was also present in this meeting. Sh. S.

K. Saxena, adv. has also taken me through the testimony of P. K. Mahapatra, IAS (PW26), who testified that in another meeting held at Haryana Niwas, Chandigarh, Sher Singh Badshami (A2) had tried to make such a misadventure in the officers meeting. It is argued that he also does not mention the name of Ajay Singh Chautala (A5) having attend the said meeting. It is argued by Sh. S. K. Saxena, adv. that therefore the testimony of Rajni Shekri Sibal about the presence of Ajay Singh Chautala (A5) in the first meeting at Haryana Niwas, Chandigarh stands uncorroborated by any oral or documentary evidence and therefore should be disbelieved. The second leg of arguments of Sh. S. K. Saxena, adv. is that even if it is presumed that Ajay Singh Chautala (A5) was present in the first meeting at Haryana Niwas, Chandigarh as well as in the second meeting held at the residence of Vidya Dhar (A1), none of the witnesses including Rajni Shekri sibal has testified that he made any suggestion for changing award lists. There is no allegations that Ajay Singh Chautala (A5) pressurized her to change it. In fact he has not even participated in the discussions. It is argued that as per the evidence obtaining on record, Ajay Singh Chautala (A5) remained totally aloof from the discussions, which were being conversed between Sher Singh Badshami (A2), Prem Prashant and Rajni Shekri Sibal. Regarding telephonic calls between Sanjiv Kumar (A3) and

Ajay Singh Chautala (A5), Sh. S. K. Saxena, has drawn my attention to the fact that while proving these telephone records, no compliance of Section 65-B of the Indian Evidence Act has been made. It is further argued that the official, who had taken out the print outs from the computer, has not been examined rather an accounts officer has been examined to prove the call details. Further these call details do not bear the signature of any of the official, who had taken out or handed over the print outs to the Investigating Officer, therefore these print outs can be changed at any time and there is no guarantee of their correctness. It is true that the certificate u/s 65B of the Indian Evidence Act is not attached with the telephonic records. However, this is not the only way to prove the telephonic records. Infact, similar contentions were advanced before a Division Bench of the High Court in ***State v. Mohd. Afzal & Ors. 2003 VII AD (Delhi)1***, which observed as under:

“276. The normal rule of leading documentary evidence is the production and proof of the original document itself. Secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act. Under Sub- clause ‘d’ of Section 65, secondary evidence of the contents of a document can be led when the original is of such a nature as not to be easily movable. Computerized operating systems and support systems in industry cannot be moved to the court. The information is stored in these computers on magnetic tapes (hard disc). Electronic record produced there from has to be taken in the form of a print out. Sub-section (1) of Section 65B makes admissible without further proof, in evidence, print out of a electronic record contained on a

magnetic media subject to the satisfaction of the conditions mentioned in the section. The conditions are mentioned in Sub-section (2). Thus compliance with Sub-section (1) and (2) of Section 65B is enough to make admissible and prove electronic records. This conclusion flows out, even from the language of Sub Section (4). Sub-section (4) allows the proof of the conditions set out in Sub-section (2) by means of a certificate issued by the person described in Sub-section 4 and certifying contents in the manner set out in the sub-section. The sub-section makes admissible an electronic record when certified that the contents of a computer print out are generated by a computer satisfying the conditions of Sub- Section 1, the certificate being signed by the person described therein. Thus, Sub- section (4) provides for an alternative method to prove electronic record and not the only method to prove electronic record."

In the decision reported as **State v Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600** the Supreme Court affirmed the afore-noted view of this Court in the following terms:

"... It may be that the certificate containing the details in sub-section (4) of Section 65B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely sections 63 and 65."

Therefore, to say that without certificate u/s 65B of Indian Evidence Act, the call details cannot be read would not be a correct proposition of law. In the present case, the call details have been proved by the prosecution by examining PW-60 Savita Rattan-Assistant Chief Accounts Officer (Computer Cell), Chandigarh and PW-61 Sorav Singh, an executive

in Spice Telecom, Mohali, Chandigarh. The testimonies of both these witnesses have not been controverted by any accused. The details stands proved by the prosecution are as under:

Phone calls detail of phone no. 708581 installed in the office of H.P.S.PP Chandigarh (Sh. Sanjiv Kumar, Director) for the month of August 2000.

DATE	TIME	PHONE NO.	DURATION	UNIT
30.08.2000	1334	011-3782650 (Ajay Chautala)	202	41
30.08.2000	1341	011-3782650 (Ajay Chautala)	215	43

Phone calls detail of phone no. 0172-2704340 (DPE Officer Chandigarh) to Sh. Ajay Chautala, 18 Janpath New Delhi

DATE	TIME	PHONE NO.	DURATION	UNIT
27.07.2000	1411	011-3782650	129	26
27.07.2000	1431-1502	011-3782180 Eight Calls	---	---

The call details regarding telephone no. 011-3782180 of Ajay Singh Chautala installed at 18 Janpath, New Delhi have been assailed by Sh. S.K.

Saxena, Adv. Prosecution has examined PW-65/1 namely Mahipal Singh to prove these call details. This witness is the Chief Accounts Officer, Central MTNL, CGO Complex New Delhi. He testified that he received a letter dt. 16.09.2005 regarding supply of STD/ISD call details of telephone no. 23782180 and 23782650 for the period from July, 2000 to October, 2000. Accordingly, he directed Incharge(Systems) and obtained from the system call details pertaining to these telephone numbers. He proved the call details of telephone no. 23782180 on 49 sheets. He testified that on his instructions, the Incharge obtained the said prints from the system and these call details were collectively marked as **Ext.PW65/1/B**. He also testified that this is an automatic electronic system in which details are automatically fed in computer. He was overall incharge of this system and the system generally never fails. If the system fails, it shows the break in the generating of call details and since there is no such break as such therefore no defect is appearing in the call details. He proved the signatures of J.H.P. Verma the then AVO(Central) on the letter dt. 28.09.2005 addressed to Sh. R.N. Azad, Addl. SP forwarding his letter as well as the computer prints to him.

In cross examination, he stated that the main server is installed in Kidwai Bhawan, New Delhi and he did know as to who was the Incharge of

the server. He testified that the system is so programmed that automatic segregation of calls takes place as and when the command is given. He testified that the concerned Accounts Officer (Customer Services and Management Services) had taken out the print out in Kidwai Bhawan, New Delhi and print out do not bear any signatures. In such circumstances, it is argued that there is no certainty about the correctness of the call details. I am of the opinion that a government department has many layers. If any investigating agency wants the call details, it is natural he would send a written request to the concerned officer. These call details have also been sent vide a letter addressed to R.N. Azad by JHP Verma, the then AVO(Central). Since he has died, therefore, the prosecution examined Mahipal Singh as a prosecution witness. It is correct that the concerned officials of MTNL or the person who had taken the print outs should have signed each and every page of the call details but nonetheless it does not mean that the same would be manipulated by the Investigating Officer. The fact that the person who had taken out the print outs or his immediate official had not put his signatures on those pages does not lead to the presumption that the same are manipulated. I may point out that these print outs are annexed with the letter addressed by the concerned officer namely JHP Verma, the then AVO(Central). Hence, these call details are the

same which were officially taken out from the server and sent to the Investigating Officer. All these acts have been done in discharge of their official duties in normal course and to view every official act with doubt is not the mandate of law. In these circumstances, I do not find any substance in the submissions of Ld. Defence Counsel. Now reproduce the chart relevant to the call details as under:

Phone call details of the no.-011-23782180 of Ajay Chautala installed at 18 Janpath New Delhi (letter dated 26.09.2005 of Chief Account Officer (RT) Central-1 MTNL, Door Sanchar Sadan, CGO Complex, New Delhi alongwith enclosures)

Date	Time	Called No.	Called No. of
30.08.2000	1120-1353 Six calls	0172708581	Sanjiv Kumar HPSP Chandigarh
30.08.2000	1306	09814004886	Sh. Sanjiv Kumar

I may point out that the users of the above stated phone numbers have been duly proved by PW-8, PW-60 and PW-61.

These call details clearly show that Ajay Singh Chautala was in constant touch with Sanjiv Kumar on 30.08.2000. Infact, Sanjiv Kumar has also testified that he had telephonically talked to Ajay Singh Chautala on 01.09.2000. Although, no call details have been available in respect of

01.09.2000 but the fact that this portion of evidence of Sanjiv Kumar A-3/DW-9 had not been controverted in cross examination by A-5, hence, it has to be taken to be true. Accordingly, by the call details and the statement of Sanjiv Kumar, I am left in no doubt that on 30.08.2000 and on 01.09.2000, A-3 & A-5 were interacting with each other. Why they were interacting has been proved by the circumstances which have been already discussed.

Although, Ajay Singh Chautala did not speak a word in the two meetings with Rajni Shekri Sibal, but, he must explain as to why he was present in those meetings where Rajni Shekri Sibal was called and asked by Sher Singh Badshami to change the lists. The purpose is obvious. His role did not end here. He remains in touch with Sanjiv Kumar on telephone on 30.08.2000 and 01.09.2000 which is the period during which the fake award lists were being prepared. Ajay Singh Chautala had a stake in the parliamentary constituency of district Bhiwani and the final result shows that the candidates selected from District Bhiwani far exceeded the vacancies of that district. Thus, Ajay Singh Chautala stands fully proved to be conspiring in this scam.

Why A-3 does not testify against Ajay Singh Chautala?

Sh. S.K. Saxena, Adv. argues that A-3 has given a clean chit to Ajay

Singh Chautala and therefore benefit of doubt should be given to him. I disagree with him. In fact, A-3 has twisted his version in respect of his interaction with Ajay Singh Chautala by stating that he had asked him to appoint JBT teachers in DPEP. This was a ploy of A-3 to wriggle out of the call records showing interaction between him and A-3.

110. The Cabinet Decision and decision of enhancing interview marks.

I reproduce para 6 of the charge sheet as under :-

“Investigation disclosed that till 1999, recruitment of JBT teachers was being conducted by Haryana Staff Selection Commission, Chandigarh. Sh. Om Prakash Chautala, Chief Minister of Haryana was also holding the portfolio of Education Minister, Haryana in September, 1999. A decision was taken in the meeting of Cabinet of Ministers of Haryana on 8.9.1999 by which the JBT teachers recruitment was taken away from the purview of the Haryana Staff Selection Commission and was entrusted to the Directorate of Primary Education Haryana. This proposal was not in the list of Agenda items but was considered with the permission of Sh. Om Prakash Chautala, the then Chief Minister, Haryana with the ulterior motive to bring the recruitment under his executive control on the pretext of acute shortage of teachers in Government Schools. In compliance of the Cabinet decision, letter of O/o Directorate of

Primary Education dated 23.7.1999 addressed to Haryana Staff Selection Commission for advertisement and recruitment of 3213 posts of JBT teachers in Haryana was withdrawn in October 1999. The Director of Primary Education was entrusted with the recruitment of the JBT teachers in Haryana through District Level Selection Committees (DLSCs). The Staff Selection Commission was reconstituted only in Jan. 2000, when the interviews for JBT teachers recruitment were completed by the District Level Selection Committees.”

Sh. I. D. Vaid, Ld. Special Public Prosecutor has drawn my attention to the testimony of PW31 Sardar Singh, Superintendent in the office of Director Primary Education as well as testimony of PW38 and submits in the meeting of Councils of Ministers, the issue of taking out selection of JBT teachers out of the purview of Staff Selection Commission was not in the agenda of the meeting. It is argued that proceedings **Ex.PW38/DE** show that this issue was raised with the permission of the Chief Minister and was approved immediately. Ld. Special Public Prosecutor argues that such a haste in taking out this decision out of purview of the Staff Selection Commission shows the malafides of Chief Minister. On the other hand, Sh. S. K. Saxena, adv. has drawn my attention to the testimony of Prem

Prashant as well as to the testimony of Vishnu Bhagwan, IAS that there was acute shortage of the JBT teachers in the Districts and the studies of the students were jeopardized due to this shortage. Due to this reason, this decision was taken in the Cabinet. It is argued that the Cabinet is not bound by the agenda and it was within the Constitutional powers of the Council of Ministers to take up any issue and take a policy decision on it in view of the demands of the public. It is submitted that the prosecution witnesses have stated that if these vacancies were to be filled through Staff Selection Commission, the same would have taken more than one year. Therefore the easiest course for expeditious selection was to fill up these vacancies through District Level Selection Committees as was done in the present case. It is argued by Ld. Special Public Prosecutor that further malafide intentions can be seen that although earlier the interview marks were fixed to be 12.5% and 87.5% were allotted to the educational qualification etc. Vide a decision dated 11.11.1999, the interview marks were enhanced to 20%. It is submitted that both these decisions were taken in a meeting presided over by Om Prakash Chautala. It is submitted by Ld. Special Public Prosecutor that in this meeting headed by Om Prakash Chautala, the then CM, Sher Singh Badshahi, the political advisor to CM and Vidya Dhar OSD had also participated.

Sh. S. K. Saxena, adv. has drawn my attention to the statements under Section 313 CrPC of Om Prakash Chaula (A5) and Sher Singh Badshami (A2) in which they had specifically denied this meeting in which the marks were enhanced. I have considered these submissions. R. P. Chandra, IAS (PW38) was the Director Primary Education when the decision to take out the vacancies of JBT teachers was taken by the Cabinet. However he was not present in this Cabinet meeting dated 8.9.1999. In cross examination by Durga Dutt Pradhan (A38), this witness testifies that a selection criteria was decided wherein the marks for educational qualification were fixed at 87.5% and the marks for interview were fixed at 12.5%, which was decided as per the various decision/judgement of Supreme Court of India as well as High Court of Punjab and Haryana. This witness referred to this criteria placed at page no. 105 of **Ex.PW38/DD** (D-40 Volume-I) and stated that this criteria was approved by the then Chief Minister on 12.10.1999. In cross examination, he also admitted that vide **Ex.PW38/E**, the interview marks were fixed at 20% instead of 12.5% and that this decision was approved by the Chief Minister on 10.11.1999. However PW38 was unable to recall as to what was the reason for such enhancement of the interview marks. In cross examination by Sh. S. K. Saxena, adv., PW38 testified that **Ex.PW38/E** are not minutes of meeting

but it is a note put by the assistant referring to that meeting wherein selection criteria was approved by the Chief Minister. Sh. S. K. Saxena, adv. has drawn my attention to **Ex.PW38/E** and submits that this note does not bear the signature of Financial Minister, State Education Minister, Advocate General, Principal Secretary to CM. Additional Principal to CM-I, Additional Principal Secretary to CM-II, Director Secondary Education, Legal Remembrance, Sher Singh Badshami, political advisor. However PW38 testified that this note contains his signatures as Director Primary Education and that of FCEL Prem Prashant. It is argued by Sh. S. K. Saxena, adv. that prosecution has not produced any minutes of meeting to show that all the aforesaid persons had attended the said meeting. Therefore it is argued that Om Prakash Chautala (A4), Sher Singh Badshami (A2), political advisor and Vidya Dhar OSD cannot own the responsibility of this noting. It is argued that Sher Singh Badshami (A2) and Om Prakash Chautala (A4) have specifically denied having attended this meeting or having taken this decision. I have considered the submissions of Ld. Special Public Prosecutor as well as Sh. S. K. Saxena, adv. I agree that minutes of meeting are not available on judicial file. But all the official functions are presumed to have been done properly and the official records have to be treated to be the true reflection of the proceedings, unless proved otherwise. Balram Yadav

(PW58) was the Assistant in the office of Director Primary Education. He testified that the note **Ex.PW38/E**, which contained his signatures at point **D** with dated 11.11.1999 was initiated by him and which was approved by Sardar Singh, Superintendent, who has signed at point **E**, C. S. Kataria Registrar Education, who has signed at point **F**, J. S. Sahu Deputy Director (Education), who has signed at point **G**, and this R. P. Chandra Director Primary Education had forwarded to FCEL for approval by making endorsement and signing at point **A** and this has been approved by Prem Prashant by signing at point **B**. He testified that the meeting, which had been mentioned at page 22 of D-40 i.e the note **Ex.PW38/E**, was attended by the Chief Minister, Additional Principal Secretary to CM-I and II, Finance Minister, State Education Minister, Advocate General, Principal Secretary to CM, FCEL, Director Secondary Education, **Director Primary Education**, LR Haryana, Sher Singh Badshami, political advisor to CM and OSD to CM. This approval was for the direct recruitment of JBT teachers with selection formula : 70 marks of academic qualification, interview 20%, experience 5% etc. He testified that although final approval for this formula was given by FCEL on 11.11.1999, but it was discussed in the meeting on 10.11.1999, which was headed by the Chief Minister. In cross examination this testimony has not been controverted by Sh. S. K. Saxena, adv. for Sher

Singh Badshami (A2) and Om Prakash Chautala (A4) nor by Vidya Dhar (A1). The testimony of Balram Yadav (PW58) as well as the note **Ex.PW38/E** shows that the Director Primary Education was very much present in this meeting. R. P. Chandra, IAS (PW38) was Director Primary Education at that time and he has testified in cross examination by Durga Dutt Pradhan (A38) that the interview marks for JBT candidates were fixed at 20% instead of 12.5% and the decision was approved by the Chief Minister on 10.11.1999. Although S. K. Saxena, adv. was able to show that the signatures of Chief Minister, his political advisor and his OSD are not available on this noting **Ex.PW38/E** nor there are any minutes of this meeting bearing the signatures of these persons nor the signatures of any official, who had attended this meeting. But at the same time it must be kept in mind that R. P. Chandra, IAS, the then Director Primary Education was one of those persons, who had attended this meeting in which 20marks were fixed for interview.

Although in statement under Section 313 CrPC, A2 and A4 had denied this fact but it is interesting to note the conduct of Vidya Dhar (A1). In respect of the note sheet **Ex.PW38/E** and question no. 277 and 301 were asked by this court to which he answer as under :-

“I reserve my answer on this point as I would like to answer it after

considering the records. I would like to file written statement under Section 313 (5) CrPC in which I would clarify this issue”.

The statement of Sher Singh Badshami (A2) was recorded on 22.5.2012 and statement under Section 313 CrPC of Om Prakash Chautala (A4) was recorded on 23.5.2012. Both these accused persons in response to question no. 278 and question no. 302 stated that **no such meeting dated 10.11.1999 as referred in Ex.PW38/E was convened by them or attended by them.**

After getting to know the answer of both these accused persons, Vidya Dhar (A1) filed reply to these two question on 25.5.2012 in which he testified that he does not recollect having participated in any such meeting nor he was instrumental in increasing the interview marks. I am of the opinion that all of them are taking false stands in respect of the meeting mentioned in **Ex.PW38/E** in which interview marks were enhanced to 20 out of 100. This act of enhancing interview marks without any justification from 12.5% to 20% is indicator of the malafide intentions developing. In fact **Ex.PW38/E** proves the meeting of mind of A1, A2 and A3. This meeting will cast its shadow on the subsequent events. One leg of arguments of Sh. S. K. Saxena, adv. was that if this note is presumed to be an evidence of meeting of minds, then all the other officers mentioned in

this note should also be treated as co-conspirator. I disagree with this submission of Ld. Defence Counsel. All other officers may not even know as to with what intention these interview marks are being enhanced and therefore no further participation of any other person, who attended this meeting except A1, A2 and A4 is coming on record in the conspiracy. This evidence proves that execution of the conspiracy in question had started with taking the vacancies out of the purview of Staff Selection Commission. But it appears that effective steps to give effect to this conspiracy were stalled by the political situation as testified by Sanjiv Kumar (A3/DW9) already discussed above. It appears that when the Indian National Lok Dal got full majority in elections and formed the Government in Haryana in February/March 2000, they found opportunity to implement their plans and the first step in that direction was transfer of R. P. Chandra. PW38 R. P. Chandra has proved note dated 24.4.2000 in which he recommended that result may be computerized and final results may be prepared and that the work may be assigned to HARTRON. In cross examination by Durga Dutt Prashand (A38), he admitted that he was transferred on 26.4.2000. Although PW38 testified that he does not think that he was transferred because he made recommendations for compilation of the results, but this circumstance is a fact, which shows that persons spear heading the

conspiracy was not comfortable with this act of R. P. Chandra (A38) and therefore as soon as he made recommendations for preparation of the results, he was transferred.

111. The role of Om Prakash Chautala

Sh. S. K. Saxena, adv. argues that there is no evidence against Om Prakash Chautala (A4) except the evidence of Sanjiv Kumar (A3/DW9), who had testified that he was posted with a specific mandate of replacing the original award lists with the fake award lists and that in the break fast meeting, Om Prakash Chautala gave him such directions. It is argued that Sanjiv Kumar (A3) is such an untrustworthy witness that on his testimony Om Prakash Chautala should not be convicted. I have already discussed that SanjivKumar is a competent witness. But since he is an accomplice, only those part of his testimony should be relied, which are corroborated from other evidence. Sh. S. K. Saxena, adv. submits that the prosecution intends to connect Om Prakash Chautala (A4) from the fact that his son, his OSD and his political advisor had asked to Smt. Rajni Shekri Sibal to change the award lists. It is argued that the court would be within its right under Section 114 of Indian Evidence Act to draw a presumption but raising further presumption on such a presumption is not the mandate of law. It is argued that at the most this court can presume that Ajay Singh Chautala

(A5) Sher Singh Badshami (A2) and Vidya Dhar (A1) were part of the conspiracy but after raising this presumption, it would not be permissible to raise another presumption that they were acting on behalf of Om Prakash Chautala (A4).

The submissions of Ld. Defence Counsel, to my mind, do not have any merit. The law permits that from one “**proved fact**” more than one presumptions may be raised. For example recovery of a purse of a person, who has been murdered, may lead to two inferences simultaneously. One, that the accused has committed the offence of robbery. Second, he had committed the murder of such person while committing such robbery. In fact every case has to be judged in view of its own pecuniary facts and circumstances. I have already discussed that when R. P. Chandra (PW38) proposed to send a note for declaration of the results on 24.4.2000, he was transferred on 26.4.2000. Thereafter Smt. Rajni Shekri Sibal was posted, attempts were made to influence her to cooperate in changing the award lists but she did not agree. Rather she sealed the almirah and thereafter wrote a note dated 20.6.2000 recommending a formation of result compilation committee of six members and for getting it fed in the computer and for compiling the final merit lists for declaration of final result. This note sheet is **Ex.PW16/J** and was signed by Smt. Rajni Shekri

Sibal on 20.6.2000. **The page 70 of D-40 shows that it was sent to the Minister Education and thereafter to the Chief Minister. The Chief Minister on 16.7.2000 had approved that further action to compile the result may be taken immediately.** However it is interesting to note that between this period i.e. 20.6.2000 to 16.7.2000, Smt. Rajni Shekri Sibal was transferred and Sanjiv Kumar (A3) was brought as Director Primary Education. Sh. S. K. Saxena, adv. argues that the approval of the note of Smt. Rajni Shekri Sibal dated 20.6.2000 by the Chief Minister is the antithesis of the allegations of conspiracy. Sh. S. K. Saxena, adv. argues that it was Smt. Rajni Shekri Sibal herself, who has sought her transfer and that is why she was transferred. It is argued that prosecution is levelling false allegations that she was transferred because she was not amenable. I disagree with his submission. Smt. Rajni Shekri Sibal has testified that after very first meeting in Haryana Niwas, Chandigarh, she had requested Vishnu Bhagwa for her transfer. As per her testimony, this incident took place shortly after her transfer as Director Primary Education (where she took charge on 27.4.2000). She testified that first meeting took place on 2.5.2000. The date may not be correct but it is clear that first meeting was held shortly thereafter. Despite her request, she was not transferred rather another effort was made to pressurize her to change the lists. Instead Smt.

Rajni Shekri Sibal sent a proposal for declaration of results on 20.6.2000. **Ex.PW16/J** would show that the file was reached in the office of Chief Minister on 22.6.2000 i.e. just after two days. It remained in the office of Chief Minister upto 16.7.2000 and during this period Smt. Rajni Shekri Sibal was transferred. It means that had the approval been given by the Chief Minister to this noting before transferring Smt. Rajni Shekri Sibal, she would have released the actual lists for declaration of the result. In this background, it is clear that transfer of Smit Rajni Shekri Sibal was not account of her own request, which he made in first week of May 2000, rather it was in view of the failure of the second attempt made by Sher Singh Badshami (A2), Vidya Dhar (A1) and Ajay Singh Chautala (A5). These circumstances lend credence to the testimony of Sanjiv Kumar that he was called by the Chief Minister and was asked by Om Prakash Chautala to replace the award lists. I have already discussed that soon after taking the JBT selection out of the purview of Staff Selection Commission, the interview marks were increased by Om Prakash Chautala from 12.5% to 20%. But their plans could not succeed because of the prevalent political situation as well as perhaps due to the reason that R. P. Chandra was not comfortable person for them. I may refer to the testimony of PW1 Sanjiv Kaushal, Additional Principal Secretary to the Chief Minister during the

relevant period. He testified that the telephonic message contained in D-99 was sent by his PA namely Shadi Lal Kapoor to Director Primary Education, Jind. This message was recorded in the telephone book maintained in the office of DPEO, Jind. PW14 Dhup Singh, Deputy Superintendent, in the office of DPEO, Jind has proved this message. In this message the DPEO was directed to reach Haryana Bhawan, New Delhi on 1.9.2000 for urgent work. As per prosecution, on instructed by the Chief Minister, Sanjiv Kaushal has instructed his PA Shadi Lal Kapoor to send this message to DPEO, Jind. Sanjiv Kaushal, however, turned hostile on the point that any direction was given by the Chief Minister to him. In cross examination by Sh. I. D. Vaid, Ld. Special Public Prosecutor, he admitted that ordinarily, only he could direct Shadi Lal Kapoor to send such message, **however he clarified that in Chief Minister's office, anybody senior to him could also send such directions.** In cross examination by Sanjiv Kumar (A3), he testified that Principal Secretary to the Chief Minister was the senior most officer in Chief Minister's office. Vishnu Bhagwan was examined as **A5/DW1**. It is no one's case nor it was put to him if he had sent this message through Sanjiv Kumar. Similarly the another officer in Chief Minister's office was Mr. D. S. Dhesi (PW59), who was Additional Principal Secretary-I to the Chief Minister Haryana at that time. It is no one's case

that Sanjiv Kaushal has sent this message at the instance of PW59. Therefore I agree with Ld. Special Public Prosecutor that Sanjiv Kaushal is concealing a very material information from the court as to who had asked him to send this message. This witness, in his cross examination, has tried to explain that some other senior officer might have come to his office and might have suggested to him that such a message needs to be passed while sitting in his office. However Shadi Lal Kapoor (PW9) is very emphatic in testifying that he has sent this message to DPEO, Jind at the instructions of SanjivKaushal, Additional PS to Chief Minister. In these facts and circumstances, it stands proved that message has directly come from the Chief Minister's office to DPEO, Jind to reach Haryana Bhawan, New Delhi on 1.9.2000.

Therefore profuse evidence is available on record to show that it was Om Prakash Chautala, who was managing the whole affairs. First he took out the JBT vacancies out of the purview of Staff Selection Commission, then he increased the interview marks from 12.5% to 20%. However he could not materialized his intentions due to prevailing political situation where he was running a coalition government. As soon as the Indian National Lok Dal got full majority of its own in the elections held in February-March, 2000, the opportunity to execute the conspiracy was

available. When R.P. Chander-IAS (PW-38), the then Director Primary Education moved the proposal to declare the results on 24.04.2000, he was transferred on 26.04.2000. Thereafter, Rajni Shekri Sibal-IAS (PW-23) was brought in as Director Primary Education. The fact that she was asked to change the award lists by Sher Singh Badshahi(A-2)-Political Advisor to Chief Minister in presence of Vidya Dhar (A-1)-Officer on Special Duty to the Chief Minister as well as in the presence of Ajay Singh Chautala (A-5), the son of the Chief Minister, leaves me in no doubt that all of them were acting under the directions and wishes of Om Prakash Chautala-the then Chief Minister. When Rajni Shekri Sibal recommended for compilation of the result vide her note sheet dt. 20.06.2000, she was also transferred wef 11.07.2000 and Sanjiv Kumar was appointed in her place. Testimony of Sanjiv Kumar has proved that he was given the charge of Director Primary Education with a specific mandate of changing the award lists. This is the reason that approval for compilation of the result by Result Compilation Committee was given by the Chief Minister on 16.07.2000 i.e. after the transfer of Rajni Shekri Sibal. This is a complete chain of circumstances which pin down accused Om Prakash Chautala as the main conspirator. I may point out that the notings file would show that almost at each and every stage, the note sheets have gone upto the Chief Minister for his

approval. From this an inference can be drawn that Om Prakash Chautala was kept apprised of each and every development in these selections. Further, the manner in which Vidya Dhar (A-1), Sher Singh Badshami (A-2) and Ajay Singh Chautala (A-5) had been meeting not only with Rajni Shekri Sibal but also with other officers shows that they had no apprehension of such proposals being leaked to the Chief Minister. Had these persons been acting without consent and without the blessings of Om Prakash Chautala, these accused persons would have been extremely circumspect and would have not entered into such discussions in presence of so many persons. This is another reason to believe the prosecution case that it was Om Prakash Chautala on whose behalf these persons were executing this scam. In view of these overall circumstances, the testimony of Sanjiv Kumar (A-3/DW-9) is worthy of credence that around the time when he was posted as Director Primary Education, Om Prakash Chautala had called him and had directed him to change the award lists with fresh award lists because now his government had got full majority and there was no need for him to accommodate the MLAs of other parties.

112. CONSPIRACY

Sh. N.K. Sharma, Adv.; Sh. R.K. Sharma, Adv.; Sh. Sumit Chaudhary, Adv.; Sh. D.K. Sharma, Adv.; Sh. R.L. Prasad, Adv.; Sh. Harish Bhardwaj,

adv.; sh. P. K. Sharma, adv.; Sh. Harit Chhabra, Adv., Sh. S.C. Chawla, Adv.; Sh. Manohar Lal, Adv.; Sh. Rakesh Mehta, Adv.; Sh. Sudershan Kumar, Adv.; Sh. Arvind Chaudhary, Adv. have assailed the prosecution case on the ground that A-6 to A-62 were not the part of de-sealing the almirah. They had only acted under compulsion. There is no evidence that they got any bribe nor there is any evidence that they got any of their relatives selected. It is argued as to how these accused persons can be termed as 'conspirators' especially when there is no evidence of any '**agreement**' between them. A plethora of case laws have been cited on the question of conspiracy which contain more or less the same question of conspiracy. I am not inclined to mention every authority because in all these case laws, the basic principle of law on conspiracy have been discussed. However, I would refer to one case law cited by Sh. N.K. Sharma, Adv. which is *P. Sirajuddin etc. v. State of Madras AIR 1971 Supreme Court 520*. The facts in this case were that in 1964 the Chief Minister had ordered holding of enquiries on the complaints of corruption against the accused who was Head of the Department. It was alleged against him that **he was actively responsible for directing the commission of offence by his subordinates in a particular manner**. His plea before the Supreme Court was that his subordinates should also be joined as co-accused with him. As per the evidence on record, such

subordinates of the accused had indulged in falsification of the accounts and forgery of public records. Sh. N.K. Sharma, Adv. submits that the Supreme Court held the accused responsible for all these acts and did not accept his plea that his subordinates, who were shown as witnesses by the prosecution, should be impleaded as accused persons. Sh. N.K. Sharma, Adv. submits that the prosecution should also have adopted this approach and should have made A-6 to A-62 as prosecution witnesses so that they could have disclosed every fact of the case. It is further submitted that the various lacunae in this case are on account of the reason that they did not implead A-6 to A-62 as prosecution witnesses. However, it is argued that during investigation, these accused persons were given impression by the Investigating Officer and in fact such a proposal was initiated by the Investigating Officer that A-6 to A-62 should be made prosecution witnesses. It is argued that it was very appropriate for this Court to treat A-19 as a prosecution witness instead of the accused. It is further argued by Sh. N.K. Sharma, Adv. that this Court was prevented to take the similar approach in respect of the other Chairpersons and members because at that time there was no evidence of their having acted under pressure. Therefore, at the stage of charge a prima facie case of their having been conspirators in this case was disclosed and charges were framed. However, it is argued by

Sh. N.K. Sharma, Adv. that when in this trial ample evidence is available on record at this final stage that A-6 to A-62 had acted under pressure, they should not be treated as the co-conspirators and that they should be acquitted. I disagree with these submissions of Ld. Defence counsel. A perusal of the case law cited by Sh. N.K. Sharma, Adv. would show that it is a judgment on order of charge and the Court was dealing with the plea of the accused, who was the Head of the Department, that his subordinates should also be made the co-accused persons because his subordinates were cited as the prosecution witnesses. Such type of effort was made in this trial also wherein a petition was moved to summon some of the witnesses as accused persons. This Court had dismissed that petition. However, in this petition also the submissions of the petitioners were similar to the pleas raised in the above stated case law. The facts and circumstances of the case are absolutely different and are of no help to A-6 to A-62.

Sh. S.K. Saxena, Adv.; Sh. D.P. Singh, Adv. and Sh. D.S. Kohli, Adv. have referred to the case laws *State Vs Nalini & Others (1999) 5 SCC 253*; *Ajay Aggarwal Vs Union of India and Others (1993) 3 SCC 609*; *Kehar Singh and Other Vs State (Delhi Administration) (1988) 3 SCC 609*; *Sardul Singh Caveeshar Vs State of Bombay AIR 1957 SC 747* & *Sardar Sardul Singh Caveeshar Vs State of Maharashtra [1964] Vol. 2 Supreme*

Court Report 378.

It was further argued by Ld. Defence Counsels that this case should be seen in three stages. First is the Cabinet Decision and holding of actual interviews. Second stage is concerning holding of meetings with Rajni Shekri Sibal and third stage is creation of false lists by Sanjiv Kumar by holding meetings with A-6 to A-62 in the Guest House of Water Supply & Sanitation, Department of Punjab-Chandigarh in the last week of August-2000 and in Haryana Bhawan, New Delhi on 01.09.2000.

It is argued by Sh. S.K. Saxena, Adv. and Sh. D.S. Kohli, Adv. that for a cabinet decision, the Council of Ministers was responsible. It is submitted that this decision was not taken by Om Prakash Chautala, rather, it was the decision of the Council of Ministers. It is further submitted that apart from Om Prakash Chautala, the role of Sher Sing Badshami (A-2), Sanjiv Kumar (A-3) and Ajay Singh Chautala (A-5) is not seen at the first stage. Regarding the second stage, the role of A-1, A-2 & A-5 comes. However, as soon as Rajni Shekri Sibal states that this proposal was not legal and cannot be given effect to, the role of these persons ends. Sh. S.K. Saxena, Adv. argues that the role of Sanjiv Kumar (A-3) comes in the third stage when the fake lists were prepared and appointments were made on the basis of the fake lists. It is argued that Vidya Dhar (A-1), Sher Singh

Badshami (A-2), Om Prakash Chautala (A-4) & Ajay Singh Chautala (A-5) had no role in it. I disagree with these submissions. Although, the Cabinet Decision was taken by the Council of Ministers, but, it must be remembered that it was done with the permission of Om Prakash Chautala who was the Chief Minister at that time despite the fact that the item was not in the agenda. I fully agree with the submissions of Sh. S.K. Saxena, Adv. that the Council of Ministers is free to take any decision whether it is mentioned in agenda or not. However, I may point out that the term 'abuse of position' as mentioned in Section 13(1)(d) of Prevention of Corruption Act pre supposes that a person was having a legal authority to take a decision but he abused the same. Sh. S.K. Saxena, Adv. argues that since the decision was taken by the Council of Ministers, in that case all the Ministers who had attended the said meeting should be impleaded as accused persons. I disagree with this submission. It is the duty of the court to find out to which persons out of these persons was responsible for a decision which was taken with a malafide intention. True that there was acute shortage of teachers and true that legally this decision was justified, but, subsequent events would prove that this decision was taken with a particular purpose, which was illegal in the eyes of law. Soon after this Cabinet Decision, A-1 and A-2 joined Om Prakash Chautala in enhancing the interview marks from 12.5% to 20%.

Therefore, the river which started from the Head of the Government was joined by other rivulets from time to time. It was argued by Sh. S.K. Saxena, Adv. that Chief Minister cannot be imputed with the intention of increasing the interview marks because the note had started from below. I disagree with this submission. PW-3 Rajpal Singh, Superintendent Services (II) Branch-Haryana Civil Secretariat had explained that the formal orders come from Chief Minister and conveyed downwards. Although he was testifying in respect of his own branch, but, the same system would also be applicable to other departments. PW-4 Pawan Sharma, Superintendent in Services-II Branch in Haryana Civil Secretariat, Chandigarh had explained that the orders of the Chief Minister (oral or written) used to be received upon which a note used to be initiated by the Assistant. The conspiracy did not end here. R.P. Chander-IAS the then Director Primary Education was transferred as soon as he recommended the compilation of the results and Rajni Shekri Sibal was brought in. She was pressurized by Sher Singh (A-2) in presence of Vidya Dhar (A-1) and Ajay Singh Chautala (A-5) but when she refused to comply and rather wrote a note for preparation of the results, she was also transferred. However, she had already enclosed the almirah in which award lists of all the JBT teachers were lying with four meters of cloth wrapped on it. After her transfer, Sanjiv Kumar was given the charge

of Director Primary Education. Om Prakash Chautala called him and told him that mandate for him was to change the award lists of JBT candidates with fresh award lists in which the candidates favourable to him/his party should be favoured. Sanjiv Kumar somehow had taken out the award lists from the said almirah and thereafter called the Chairpersons and the members (i.e. A-6 to A-62) at the Guest House in Chandigarh in last week of August-2000 and at Haryana Bhawan, New Delhi on 01.09.2000, gave photocopies of some of the award lists to them and instructed them to prepared fresh award lists with a new pattern of marks and by giving specific roll numbers and the marks to be awarded to them. It stands proved that Vidya Dhar and Sher Singh Badshami alongwith Sanjiv Kumar had attended the meeting held at the Guest House of Water Supply & Sanitation, Department of Punjab and that Sher Singh Badshami had attended the meeting with the Chairpersons of the District Level Selection Committees in Haryana Bhawan, New Delhi. It also stands proved that Ajay Singh Chautala was having telephonic conversations with Sanjiv Kumar on or around these dates. The final result prepared on the basis of the fake award lists had served three purposes. First, a formula was effected vide which the favourable candidates were given 17 or more marks irrespective of caste and category so as to ensure their success in the joint merit list. In

order to achieve this object, rest of the candidates were given very low marks in the Directorate lists. The second object was that the reserved categories which were encroaching the space for General candidates in great proportions are reduced in such a manner that minimum vacancies of General candidates are occupied by them. Third purpose was to favour the candidates of some districts like Bhiwani. Rajni Shekri Sibal has testified that she received a telephonic call offering 5% of the total bribe money, but, it could not be substantiated as to who made this call.

I have already discussed as to how A-6 to A-62 prepared and signed the fake award lists upon which the result was declared and thereafter successful candidates were given appointments.

Thus, the conspiracy which started from taking out the vacancies of JBT teachers out of the purview of the Staff Selection Commission vide cabinet decision dt. 08.09.1999 was fully executed and successfully ended when the successful candidates based on the fake lists were given appointments in October, 2000. Hence, a complete chain of events involving all the accused persons in commission of this offence stands proved beyond reasonable doubt.

113. SANCTION

It is argued by Sh. S.K. Saxena, Adv. for A-2, A-4 & A-5 that sanction u/s 197 CrPC was necessary to be taken because Om Prakash Chautala was public servant at the relevant time. It is argued that their acts were done in their discharge of official duties. I disagree with this submission. The protection of Section 197 CrPC would be available only if all the acts are done in the exercise of their official duties. However, the official acts which are imputed to Om Prakash Chautala are his role in the cabinet decision and thereafter enhancement of the interview marks. Rest of the acts are totally beyond the discharge of their official duties and the aforesaid act i.e. Cabinet Decision of enhancement of marks have been taken by this Court to ascertain their intentions which were malafide from the very beginning. Ld. Counsel has referred to ***R. Balakrishna Pillai v. State of Kerala AIR 1996 Supreme Court 901*** in his support. In this case, a Minister was charged for abusing his powers in selling the electricity to the company without the consent of the government of Kerala. It was held by the Supreme Court that since the Minister had acted in discharge of his official duty, it was a must for the prosecution to obtain sanction u/s 197 CrPC for prosecuting the minister. However, this case law is not applicable in this case because the role of accused persons goes much beyond their

official duties and the conspiracy in question was later on executed on a large scale. The tenacles of conspiracy and offence are coming out of the limits of the cloak of official discharge of the duties and are reaching out to all the Chairpersons and members of the District Level Selection Committees. In such case, sanction u/s 197 CrPC was not required.

Now I take up the question of Sanction u/s 19 of the Prevention of Corruption Act.

Prosecution has examined PW-29 Vijay Kumar to prove the sanction to prosecute Sanjiv Kumar and Vidya Dhar u/s 19 of the Prevention of Corruption Act vide sanction order Ext. PW29/A and Ext.PW29/B respectively. Prosecution has also examined PW-54 Rajan Gupta to prove sanction orders in respect of A-13, A-24, A-28, A-36, A-39, A-54 and A-59. Rest of the accused persons had retired and thereafter sanction u/s 19 of the Prevention of Corruption Act was not required to prosecute them. Sanction u/s 19 of the Prevention of Corruption Act was not required against Om Prakash Chautala because when the charge sheet was filed, he was not the Chief Minister. Ajay Singh Chautala was Member of Parliament at that time but he had no official powers in the matter of JBT selections, therefore, sanction u/s 19 of Prevention of Corruption Act was not required to prosecute him. It is an admitted case of the prosecution that Sher Singh

Badshami is not a public servant, therefore, no sanction u/s 19 of Prevention of Corruption Act was required to prosecute him.

114. Whether the investigations were biased?

CBI has faced criticism from all the accused persons and it has been alleged that investigation was not fair. Sh. S.K. Saxena, Adv. argues that in FIR there is no mention of Om Prakash Chautala. It is submitted that it means that prosecution did not find anything in the preliminary enquiry against Om Prakash Chautala. On the other hand, Sanjiv Kumar argues that the investigation by CBI took a turn against him because some officers of CBI demanded bribe from him to make him prosecution witness, but, when he (i.e. A-3) refused, CBI mixed up with Om Prakash Chautala. That is why the name of Om Prakash Chautala has not been written in the FIR despite definite evidence given by him (i.e. A-3) to CBI against Om Prakash Chautala in the Writ Petition. A-6 to A-62 have alleged that they fully cooperated with the investigating officer and investigating officer had assured them that they would be made witnesses in this case. It is submitted by the Ld. Defence Counsels that despite the fact that they had informed the investigating officer as to what type of pressure was exerted upon them, CBI still prosecuted them as accused. Sh. S.K. Saxena, Adv. has drawn my attention to the testimonies of PW-16, PW-23 & PW-26 which

show that CBI had shown their statements u/s 161 CrPC before they entered the witness box. I disagree with this submission because truthfulness of these witnesses has purged this defect.

It is, therefore, argued that the accused persons in this case have been prejudiced in their defence even during the trial.

I disagree with these submissions. FIR is not an evidence, rather, it is a starting point of the investigation. It appears name of Om Prakash Chautala was not written in the FIR because he was a respectable political leader holding the highest post in the State of Haryana and it appears that at that stage the story of Sanjiv Kumar about the involvement of Chief Minister in the scam might have been taken by the CBI with a pinch of salt. However, further investigation revealed the involvement of Om Prakash Chautala to be true. Similarly, Sanjiv Kumar was petitioner in his Writ and has present himself to be a victim and had called himself a whistle blower. This appears to be a reason that his name did not figure in the list of accused persons. Any how, FIR has no evidentiary value and no such conclusions can be drawn that the non mentioning of name of Om Prakash Chautala and Sanjiv Kumar implies that they were found to be innocent during preliminary enquiry. Though, I agree that it appears that A-6 to A-62 were given the impression that they would be made witnesses in this case,

but, investigation and circumstances proved otherwise and therefore they had to be implicated as the accused persons. In this case, the investigating officer might have committed some mistakes or at some points there may be some deficiency in the investigation, but, when a case is investigated after three years of the incident, the investigating officer has to work under many limitations. However, at the same time I would say that the investigation was fair and there is nothing on record that it was biased against any of the accused persons for any reasons including the political one.

115. OFFENCES PROVED

In view of the above discussion, I am of the opinion that prosecution has been able to prove its case beyond reasonable doubt against **O.P. Chautala (A-4) and Sanjiv Kumar (A-3) u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act.**

Prosecution has been able to prove its case beyond reasonable doubt **u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act against accused A-6 to A-62 {except accused Sher Singh (A-23), Dilbagh Singh (A-35), Ram Singh (A-41) and Jogender Lal (A-62) as they had retired when the second set of award lists was prepared and except A-14, A-18, A-34, A-42, A-53 & A-58 who have already expired and except A-19 who had already been discharged.}**

These accused persons namely A-6 to A-62 (except who died or were discharged) also stands convicted u/s 418 IPC.

A-6 to A-62 (except accused Sudha Sachdev A-49 and those who died or were discharged) also stand convicted u/s 467/471 IPC.

All the accused persons i.e. A-1 to A-62 (except those who have expired or discharged) stands convicted u/s 120-B IPC r/w Section 418/467/471 IPC r/w Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Announced in the open court
on this 16th day of January, 2013

(Vinod Kumar)
SPECIAL JUDGE-II
(PREVENTION OF CORRUPTION ACT)
(CBI), ROHINI, DELHI