MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

RAN SINGH KALSON,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 2760 *of* 1973

February 3, 1978.

Indian Police Service (Appointment by promotion) Regulations 1955—*Regulation* 5(5)—*Crossing of efficiency bar—Whether has the effect of wiping out prior adverse entries—Such entries—Whether can be considered at the time of future promotion—Representation against fixation of seniority—Whether to be rejected only by a speaking order.*

Held, that the adverse entries which are not considered serious enough to hold a Government servant at the efficiency bar obviously could not form the basis of a charge of his dismissal but different considerations prevail when his suitability is to be judged for promotion to a higher rank. While allowing the crossing of efficiency bar, the authority concerned has to form an opinion on the basis of the past record as to whether there are adverse entries of such magnitude as not to allow crossing of the efficiency bar whereas promotion is not made on the basis of absence of adverse reports but on the basis of positive merit. The scales for allowing to cross the efficiency bar and for giving promotion are different. What is sufficient in the former may be wholly insufficient for the latter. Adverse report not construed as deterrent for crossing the efficiency bar is not obliterated and can be taken into consideration for negativing the claim for promotion. Thus, while considering the case of a public servant for future promotion, it is open to the competent authority to take the entire record of service into consideration for judging his suitability.

(Paras 7 and 8)

Shadi Lal *v.* Deputy Commissioner and others 1974(1) S.L.R. 217 overruled.

Held, that it cannot be said that for rejecting a representation against the fixation of seniority the Government must pass a speaking order. While passing any administrative order the Government is not bound to act in quasi judicial manner and pass a well reasoned

order. The requirement of fair play and justice would be squarely met if from the record it could be shown that the representation had been properly dealt with and rejected on merits.

(Paras 11 and 13).

M. K. Bakhshi *vs.* State of Punjab 1971(1) S.L.R. 119 overruled.

Case referred by Hon'ble Mr. Justice S. P. Goyal, on 8th February, 1977 to a larger Bench for decision of some important questions involved in the case. The Division Bench, consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal, had finally decided the case on 3rd February, 1978.

Amended Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted :—

(i) *A writ in the nature of a Writ of Certiorari be issued directing the respondents 1, 2, 14 and 15 and 16 to place the entire record before the Court relating to the supersession of the petitioner at the time when his juniors were promoted to the rank of Superintendents of Police in the non-IPS cadre in May, 1972; December, 1972; January/February; and August, 1973, and also the record relating to the non-issue of the Integrity certificate in respect of the case of the petitioner in connection with the preparation of the Select Lists for the periods upto 1st January, 1972 and 1st January, 1973 and after a perusal of the same the impugned action of the respondents be quashed;*

(ii) *A Writ in the nature of a Writ of Mandamus be issued directing the respondents 1, 2 & 15 to consider the case of the petitioner for promotion to the rank of Superintendent of Police in the non-IPS cadre with effect from the date when his junior Shri V. K. Kapur was so promoted, without making any reference to the four Confidential reports relating to the periods, 1st April, 1965 to 31st March, 1966, 1st November, 1966 to 31st March, 1965, 1st April, 1967 to 31st March 1968 and 8th December, 1970 to 31st March, 1971.*

(iii) *A Writ in the nature of a writ of Mandamus be issued directing the respondents 1, 2 & 16 to reconsider the case of the petitioner for the issuance of an Integrity Certificate under the IPS Promotion Regulations without making any reference to the four Confidential Reports for the periods, 1st April, 1965 to 31st March, 1966, 1st November; 1966 to 31st March, 1967 and 1st April, 1967 to 31st March, 1968 and 8th December, 1970 to 31st March, 1971;*

(*iv*) *A Writ in the nature of a Writ of Mandamus be issued directing the respondents* 1, 2, 14 *and* 16 *to reopen the preparation of Select lists prepared and approved upto* 1*st January,* 1972 *and* 1*st January,* 1973 *under the Indian Police Service* (Appointment by Promotion) Regulation, 1955 and prepare *the list afresh after the Integrity Certificate has been issued to the petitioner and the case of the petitioner has also been placed before the Selection Committee and the Selection Committee be directed to consider the case of the petitioner ignoring the four confidential reports relating to the periods* 1*st April* 1965 *to* 31*st March,* 1966, 1*st November,* 1966 *to* 31*st March,* 1967; 1*st April;* 1967 *to* 31*st March;* 1968 *and* 8*th December,* 1970 *to* 31*st March;* 1971;

(*v*) *Any other suitable Writ, Direction or Order this Court may deem fit in the circumstances of this case be issued* ;

(*vi*) *Costs of this petition; be allowed to the petitioner.*

Anand Sarup, Advocate with M. L. Bansal, Advocate, *for the Petitioner.*

Chandra Singh, Advocate, *for the Respondents.*

JUDGMENT

S. P. Goyal, J.

(1) This petition under Articles 226 and 227 of the Constitution of India was referred to us primarily to resolve a conflict between two Single Bench decisions of this Court in *Shri Shadi Lal* v. *The Deputy Commissioner Gurgaon and others* (1) and *Jaswant Singh Brar* v. *State of Punjab and others* (2) on the point as to whether once a government servant is allowed to cross efficiency bar, adverse reports prior thereto could be taken into consideration while judging his suitability for promotion to a higher rank but as the petition as a whole is before us for disposal, the respective pleadings and contentions of the parties may first be noticed.

(2) The petitioner was appointed as Deputy Superintendent of Police to the Punjab Police Service on June 21, 1963, as a result of the competitive examination held by the Punjab Public Service

(1) 1974 (1) S.L.R. 217.
(2) 1975 (1) S.L.R. 899.

Commission and confirmed as such on December 21, 1965. The pay-scale of the petitioner in the year 1971 was Rs. 400—30—580/40—720—40—800—50—1000/50—1150, and he was to cross the first efficiency bar on February 2, 1971. He was, however, served with a notice dated November 12, 1971, to show cause against his proposed holding up at the efficiency bar on the basis of four confidential reports for the periods 1st March, 1965 to 31st March, 1966, 1st November, 1966 to 31st March, 1967, 1st April, 1967 to 31st March, 1968 and 8th December, 1970 to 31st March, 1971. The representation made by the petitioner, in reply to the said notice, was rejected and he was held up at the efficiency bar vide order dated December 27, 1971. He filed an appeal against this order which was allowed by the Government vide order dated June 7, 1972. In the meantime, V. K. Kapur, respondent No. 3, who was junior to the petitioner, was promoted to officiate as Superintendent of Police and against his promotion the petitioner made a representation on June 17, 1972. While this representation was still pending decision, some more posts of Superintendents of Police in the non-I.P.S. cadre fell vacant and respondents Nos. 7, 8 and 9, who were also junior to the petitioner, were promoted and appointed to officiate as Superintendents of Police, with effect from February 26, 1973, January 31, 1973 and January 16, 1973 respectively. Admittedly, while considering the suitability of the petitioner for promotion, the said four reports were taken into consideration. The petitioner has challenged his supersession and promotion of the officers junior to him, apart from the allegations of *mala fide* against J. C. Vachher, the then Inspector General of Police Haryana and Kalyan Rudra, the then Superintendent of Police, Rohtak, on the ground that the adverse reports prior to the date he was allowed to cross the efficiency bar had been illegally taken into consideration while judging his suitability for promotion and that the representations made by him against his supersession and adverse entries were summarily rejected without proper application of mind, by a non-speaking order.

(3) The other challenge of the petitioner is directed against the non-inclusion of his name in the select list under Regulation 5 of the Indian Police Service (Appointment by promotion) Regulations 1955, prepared by the Select Committee for promotion to the Indian Police Service Cadre in December 1972. According to the petitioner, his name was not considered by the Select Committee because of the non-issuance of integrity certificate by the State Government and, if considered, was rejected on the basis of the

said four confidential reports. The instructions of the Government of India issued under Regulation 4 prescribing the requirement of integrity certificate, it was argued, were illegal and void, being contrary to the statutory regulations. The consideration of the four confidential reports has been attacked on the grounds already noticed above.

(4) In the written statement filed on behalf of the State of Haryana, it was admitted that the appeal of the petitioner against the order holding him at the efficiency bar was allowed on the ground that the confidential report for the period December 8 to March 31, 1971, could not be taken into consideration and he was allowed to cross the efficiency bar with effect from February 2, 1971. The other material averments made in the petition were denied and it was stated that he was duly considered for appointment as officiating Superintendent of Police and for the inclusion of his name in the Select List but was not found fit on the basis of his over-all record including the impugned four confidential reports. The allegation of the petitioner that his representations against the confidential reports and his supersession have been rejected without proper application of mind and by a non-speaking order was also controverted and it was stated that the same were duly considered and rejected by the appropriate authority. J. C. Vachher, Inspector General of Police Haryana (respondent No. 2) and Kalyan Rudra, Superintendent of Police, Rohtak (respondent No. 15), filed separate affidavits to deny the allegations of *mala fide* against them.

(5) As noticed in the opening of this judgment, the foremost attack against his supersession was that the confidential reports prior to the date he was allowed to cross the efficiency bar could not be taken into consideration while judging his suitability for promotion. The main reliance for this contention is placed on the Supreme Court decision in the *State of Punjab* v. *Dewan Chuni Lal,* (3). Relying on this decision, Tuli, J. in *Shri Shadi Lal's case* (supra) held that "any adverse entry in the service record of the petitioner prior to November 1, 1964, could not taken into consideration while determining his merit for promotion as he was allowed to cross the efficiency bar due on November 1, 1964, which condoned all the previous adverse entries:" However, a contrary view was taken by Sharma, J. in *Jaswant Singh Brar's case* (supra) wherein

(3) A.I.R. 1970 S.C. 2086.

it was held that when the case of a public servant is considered for future promotion vis-a-vis his colleagues then it is open to the competent authority to take the entire record of service of the public servant into consideration for judging his comparative merit.

(6) In *Dewan Chuni Lal's lase* (supra), Dewan Chuni Lal, Sub-Inspector, was called upon to answer a charge framed on October 12, 1949 setting forth extracts from his confidential character roll showing his inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the *prima facie* charge of inefficiency as envisaged in paragraph 16.25(2) of the Punjab Police Rules. He was allowed to cross the efficiency bar in the year 1944. With respect to the entries in the year 1941 and 1942, their Lordships of the Supreme Court opined that reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. This decision obviously has no bearing on the question as to whether the adverse entries in the character roll of a public servant prior to the date when he was allowed to cross the efficiency bar could be taken into consideration while assessing his suitability for promotion to a higher rank. As held in *State of Orissa* v. *Sudhansu Sekhar Misra and others*, (4) a decision is only an authority for what it decides. What is the essence in a decision is its ratio and not every observation found there nor what logically follows from the various observations made in it." From the decision in *Dewan Chuni Lal's case* (supra), therefore, it cannot be legitimately inferred that the entries prior to the order allowing the efficiency bar are rendered *non est* for all purpose.

(7) The adverse entries which are not considered serious enough to hold a government servant at the efficiency bar obviously could not form the basis of a charge of his dismissal but different considerations prevail when his suitability has to be judged for promotion to a higher rank. While allowing the crossing of the efficiency bar, the authority concerned has to form an opinion on the basis of

(4) A.I.R. 1968 S. C. 647.

the past record as to whether there are adverse entries of such magnitude as not to allow crossing of the efficiency bar whereas promotion is not made on the basis of absence of adverse reports but on the basis of positive merit. As observed in *S. S. S. Venkatran* v. *State of Orissa and others* (5) the scales for allowing to cross the efficiency bar and for giving promotion are different. What is sufficient for the former may be wholly insufficient for the latter. Adverse report not construed as deterrent for crossing the efficiency Bar is not obliterated and can be taken into consideration for negativing the claim for promotion. Regarding the observations in *Dewan Chuni Lal's case*, it was held that the same were distinguishable and were based on the peculiar facts of that case and did not support the broad proposition that the adverse entry prior to the crossing of the efficiency bar is wiped out.

(8) So far as the decision of this Court in *Shri Shadi Lal's case* (supra) is concerned, the learned Judge simply accepted the contention of the learned counsel that in view of the decision of their Lordships of the Supreme Court in *Dewan Chuni Lal's case* the adverse entries in the service record of the petitioner prior to November 1, 1964, when he was allowed to cross the efficiency bar could not be taken into consideration while considering his case for promotion to the higher post, without ever adverting to the facts in *Dewan Chuni Lal's case* or the purpose for which it was held that the adverse entries could not be taken into consideration. On a proper analysis of *Dewan Chuni Lal's case*, we are unable to hold that the adverse entries prior to the date when a public servant is allowed to cross the efficiency bar are completely wiped out or cannot be taken into consideration while judging his suitability for promotion to a higher rank. We are, therefore, of the considered view that the *case of Shri Shadi Lal* (supra) was not correctly decided and that while considering the case of a public servant for future promotion, it is open to the competent authority to take the entire record of service into consideration for judging his suitability. Consequently, there is no merit in the first contention of the petitioner that he had been wrongly susperseded by taking into consideration the adverse reports prior to the date he was allowed to cross the efficiency bar.

(9) This brings us to the next contention of the petitioner that the representations made against his supersession were summarily

(5) (1974)2 S.L.R. 897.

rejected without proper application of mind, by a non-speaking order. The allegation made in this behalf in paragraph 16 of the petition was denied in the written statement filed by the Government and it was stated that the representations were dismissed on merit after giving full consideration to the matter. The order passed by the Government rejecting the representation has been produced by the petitioner as Annexure 'M' which reads thus:—

> "The representations of Shri Ran Singh, Deputy Superintendent of Police, dated 17th June, 1972 and 1st August, 1972 for not promoting him in the rank of the Superintendent of Police, have been rejected by the Government after consideration."

The learned counsel contends that the order does not show the application of its mind by the Government nor it contains any reason for rejecting the representations and as such was liable to be quashed, being a non-speaking order. Reliance for this contention has been placed on *M. K. Bakshi, Deputy Excise and Taxation Commissioner* v. *The State of Punjab and others* (6), *Union of India and others* v. *Madan Lal, Head Clerk, Rajendra Hospital Patiala* (7), *Lal Chand Pargal* v. *Director CD and MES and others* (8), *and Kartar Singh* v. *Delhi Administration and others* (9).

(10) In *Lal Chand Pargal's case* (supra), on consideration of the provisions of Rule 25(2) of the Jammu and Kashmir Services (Classification, Control and Appeals) Rules, 1956, the Full Bench held that language of the said rule implies that reasons for by passing of a senior employee must be given by the appointing authority in order to show that the appointing authority had actually applied its mind. The Full Bench, however, further proceeded on to say that even if the appointing authority does not record reasons in the order, it will be sufficient compliance with the provisions of rule 25(2) of the Rules if contemporaneous or anterior record on the basis of which order of promotion is passed by the appointing authority clearly shows that reasons have been given for promotion and that the appointing authority has applied its mind by proceeding on the

(6) (1971)1 S.L.R. 119.
(7) (1971)2 S.L.R. 51.
(8) A.I.R. 1971 J. and K. 108.
(9) (1974)1 S.L.W.R. 539.

basis of such record which contains the grounds for promotion. According to this decision, therefore, it is not necessary that the reasons must be recorded in the order of promotion and it would be sufficient to show the application of the mind by the Government if the file containing the order of promotion shows that whole of the contemporaneous record was taken into consideration while passing the promotion order. This judgment, therefore, is hardly of any help to the petitioner. Similarly, the decision of the Division Bench of this Court in *Madan Lal's case* (supra) is distinguishable on facts and has no bearing on the question in hand. In that case, the seniority of Madan Lal had been changed without affording any opportunity of being heard to him. Consequently, it was held that as the fixing of seniority of a government servant to his disadvantage would seriously affect his future chances of promotion in service, he must be given notice before revising his seniority to his detriment. This decision does not lay down that the Government is required to pass any speaking order either while fixing the seniority of the government servant, or while rejecting his representation.

(11) In *M. K. Bakhshi's case* (supra), the petitioner made a representation against fixation of his seniority and relying on the *State of Orissa* v. *Dr. (Miss) Binapani Dei,* (10), Tuli, J. held that it was incumbent on the government to consider and decide that representation in a *quasi* judicial manner by passing a reasoned order which is called a speaking order. Reliance on *Dr. (Miss) Binapani's Dei's case* (supra), in our view, was wholly misplaced. In that case, the government held an enquiry and as a result thereof, served Dr. (Miss) Binapani with a show-cause notice requiring her to show cause as to why her date of birth should not be accepted as April 4, 1907. She in the reply submitted that her date of birth was correctly recorded but the Government by its order dated June 27, 1963 determined her date of birth as April 16, 1907. This order was challenged, *inter alia,* on the ground that the same had been passed in violation of the principles of natural justice. While accepting her contention, J. C. Shah, J. observed as under :—

> "The State was undoubtedly not precluded, merely because of the entry of the date of birth of the first respondent in the service register from holding an enquiry if there

(10) 1967 S.L.R. 465.

existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed, it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nulity."

It is evident from the perusal of the said observations that the Government in that case held some enquiry and on the basis of material collected during that enquiry a show cause notice was issued. Dr. (Miss) Binapani, however, was neither informed of that material nor she was allowed any opportunity to rebut the evidence collected by the Government. It was in these circumstances that their Lordships of the Supreme Court came to the conclusion that the action taken had resulted in violation of the principles of

natural justice. The facts of this case, therefore, have no analogy to the case of the fixation of seniority. The observation quoted above in *Dr. (Miss) Binapani's case* (supra) were made in the context of an enquiry held by the Government and the same cannot be extended to the case of the fixation of seniority which does not involve the holding of any enquiry or the collection of any material. The observations in *Dr. (Miss) Binapani's case*, therefore, could not be by any process of logic, made applicable to the case of the fixation of seniority nor could it be held reasonably on the basis of the said observations that for rejecting the representation against the fixation of seniority, the Government must pass a speaking order. Consequently we are unable to agree with the decision in *M. K. Bakshi's case* and the same is hereby overruled.

(12) In *Kartar Singh's case* (supra), the representation made against the adverse remarks was dismissed without passing a speaking order which was quashed by Sachar, J., with the following observations :—

> "A very elaborate set of rules and instructions have been made by the government in the matter of disposal of representations made by the government servant against the adverse remarks. Specific instructions and rules have been made directing the reviewing officer to deal to satisfy themselves that assessment has been made in an objective manner and whether he agrees or disagrees with the reporting officer. Rule 13.17 made by the I.G.P. provides for representation being made against the adverse entry to the competent authority. The Government of India has also in its memorandum stressed the urgency and importance of representation against the adverse entry by providing that they should be decided within 8 weeks from the date of representation. It is undisputed that the adverse entry has very vital effect on service career of the employee and cannot be lightly treated because on this may depend the future career of the government employee. In the instant case a detailed representation had been made by the petitioner. The least that fairness demands is that the competent authority would apply his mind to the various points raised and pass a speaking order dealing with important points raised by the petitioners and at least indicating even briefly the reasons which persuaded

to reject the representation. But all that has been done in this case was that a cryptic order has been passed by the respondent No. 3 informing the petitioner that his representation has been considered and rejected. Now this is a most unsatisfactory method of disposing of the representations which concern such a vital aspect of the petitioners careers. I am not suggesting that respondent No. 2 should write a judgment as a court of law But here was a representation in which challenge was made to the bona fide of the report, the absence of report having been sent to the reviewing officer, the non-compliance with rules and instructions. Surely these major points needed to be dealt with by respondent No. 2, and the same must be apparent from a reading of his order".

A perusal of these observations would show that in the representation the confidential reports had been challenged on the ground of *mala fide* and non-compliance with the rules and instructions. The petitioner had a statutory right of making a representation which was to be disposed of according to the elaborate instructions issued by the Government. In these circumstances it was held that the dismissal of the representation with the words, "considered and rejected" was the most unsatisfactory method of its disposal. The ratio of this decision, therefore, will not be helpful in the present case but all the same we are unable to agree that the government while performing its administrative functions is required to act judicially or to pass a speaking order whenever such an order results in civil consequences.

(13) No direct case has been brought to our notice wherein it was held that the representation against the supersession of a government servant is required to be disposed of by a speaking order. On principle, we find no reason to hold that while passing any administrative order the government is bound to act in quasi judicial manner and pass a well-reasoned order. The requirement of fair play and justice, in our view, would be squarely met if from the record it could be shown that the representation had been properly dealt with and rejected on merits. In the present case even according to the petitioner, he was superseded because of the four adverse entries noticed above and in the written statement, the government has categorically stated that his representations were considered on merits and rejected because of the adverse

entries. In these circumstances, we find no merit in the contention of the petitioner that his representation had been dismissed without application of proper mind and by laconic order.

(14) It was next contended by the learned counsel for the petitioner that the four adverse entries were never accepted by the highest administrative authority—which in his case was the government before their communication to the petitioner and, therefore, the said entries could not be said to have been validly recorded by the competent authority. In support of this contention, the learned counsel relied on certain instructions of the government contained in Consolidated Instructions Regarding Confidential Reports and reproduced by him in paragraph 19 of the petition, according to which the highest administrative authority means the appointing authority or the authority to whom representation against the punishment of censure lies under the existing rules. The argument of the learned counsel is wholly misconceived because the letter whereby highest administrative authority was defined to mean the "appointing authority" or authority to whom the representation against punishment of censure lies was issued on June 24, 1972 whereas the impugned entries relate to the period prior to April 1, 1971. The instructions relied upon by the learned counsel, therefore, would have no application to the said adverse reports. In its written statement, the government has categorically stated that when those entries were made in the character roll, Inspector General of Police was the competent authority under rule 13.17(3) of the Punjab Police Rules to approve the confidential reports. As it is not disputed that the said adverse entries were approved by the then Inspector General of Police before their communication to the petitioner, we find no merit in the contention of the petitioner that the adverse entries had not been accepted by the competent authority and validly recorded.

(15) The other claim of the petitioner that his name was not considered by the Select Committee because of the non-issuance of the Integrity Certificate and if considered was rejected on the basis of the said four confidential reports is, however, well-founded. Sub-clause (5) of Regulation 5 of the Indian Police Service (Appointment by promotion) Regulations, 1955, requires that if in the process of selection, review or revision it is proposed to supersede any member of the State Police Service, the Committee shall record its reasons for the proposed supersession. By a Government decision dated July

28, 1965, it was further decided by the Chief Secretary to the State Government who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Select Committee shall issue an integrity certificate. The Chief Secretary to Government Haryana declined to issue 'integrity certificate' to the petitioner. From the perusal of the report of Select Committee, we find that the name of the petitioner was not considered for inclusion in the select list because of the non-issuance of the integrity certificate though it was mentioned therein that the petitioner was not found fit on merit also. The instructions requiring 'integrity certificate' were declared *ultra vires* in a recent Division Bench decision in *Gurdayal Singh Fiji* v. *The State of Punjab and others,* (11), in the following words:—

> "Regulations 3 to 7 are self-contained regulations prescribing the whole procedure for the constitution of the Selection Committee, qualifications for the eligibility, preparation of list of suitable candidates etc. It is evident from the plain reading to these regulations that integrity certificate is not the requirement for eligibility for promotion. Integrity certificate is the requirement of resolution 1-1 which is only an executive instruction. The regulations are quite detailed and the whole mode of selection is given and merit-cum-seniority is the main basis for bringing the persons on the Select List. It is nowhere laid down in the regulations that integrity certificate is also required for eligibility for promotion. Hence this requirement under the executive instructions goes counter to the statutory regulations. It has put restrictions and limitations on the Committee in its discretion. Moreover, it is nowhere laid down as to how the integrity certificate is to be issued. No criteria is mentioned in resolution 1.1. No guideline is provided. Hence it can lead to arbitrariness and unreasonableness in certain cases. I have, therefore, no hesitation in holding that resolution 1.1 contravenes the Regulations which cannot legally be sustained and is struck down as ultra vires of regulations 4 and 5."

(11) 1977 S.L.W.R. 57.

In view of this decision of the Division Bench, we have no option but to hold that the Select Committee had illegally refused to consider the petitioner for the inclusion of his name in the select list. The learned counsel for the State, however, contended that in spite of the non-issuance of the integrity certificate, the case of the petitioner was considered on merits as well and rejected by the Select Committee. No doubt, in the report of the Select Committee, it is mentioned that the petitioner was found unfit on merit also but we are not satisfied that this passing observation is enough to show that the case of the Petitioner, in fact, was considered on merits because no reasons were recorded for his supersession by the Select Committee as required in sub-clause (5) of Regulation 5. A perusal of the report of the Select Committee shows that reasons were recorded for superseding certain eligible members of the service and if the case of the petitioner had also been considered on merits there was no reason why his name would not have been mentioned amongst the names of other alleged superseded members and the reasons recorded for his supersession. We, therefore, fully agree with the contention of the petitioner that his name was not at all considered by the Select Committee because of the non-issuance of the integrity certificate and in view of the decision in *Gurdayal Singh Fiji's case* (*supra*) it has to be held that the Select Committee has illegally refused to consider the name of the petitioner for being included in the select list.

(16) Consequently, this petition is allowed to the extent noticed above and a direction is ordered to be issued to respondents Nos. 1 and 14 to consider the petitioner for the inclusion of his name on the Select list prepared for the year 1973. In view of the partial success of the petition, the parties are left to bear their own costs.

S. S. Sandhawalia, J.—I agree.

K. T. S.

APPELLATE CRIMINAL

Before D. S. Tewatia and D. B. Lal, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

DES RAJ,—*Respondent.*

Criminal Appeal No. 1223 of 1974

February 7, 1978.

Code of Criminal Procedure (*II of* 1974)—*Sections* 510-*A and* 540—*Punjab Excise Act* (1 *of* 1914) *Section* 61 (1) (*a*)—*Criminal trial*—