petitioners later on managed to take possession of those very lands which they claimed to have got in exchange. On a move by the respondents, the Collector dismissed the petition, holding that the case was outside the purview of section 43. On appeal by the respondents, the Commissioner, however, purporting to act under section 43 of the Act, ordered ejectment. That decision was affirmed by the Financial Commissioner in revision. Upon these facts, Grover, J., held, "that section 43 of the Act cannot possibly apply to any alleged trespasser who came into occupation or possession of the land, which has nothing to do with the provisions of the Act." I am in respectful agreement with that view.

For all the reasons stated above, I have no hestitation in holding that the Collector was competent by virtue of section 43(1) of the Act to eject the petitioners in a summary way, and also to impose the penalty on them. The result is that the petition fails and is hereby dismissed. In the circumstances of the case, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

NIRANJAN DASS SEHGAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Resondents*

Civil Writ No. 177 of 1967

September 27, 1967

Evidence Act (1 of 1872)—S. 123—Rule of privilege—Scope of—Records of State containing information regarding prosecution of Government servant for offences under Penal Code, institution of inquiries on several grave charges, defying the orders of the Government, committing of misconduct, etc. etc.—Whether privileged—Affidavit of the Officer concerned—What should contain—Privilege regarding documents relating to affairs of State—When can be claimed—Constitution of India (1950)—Art. 226 and 311—Disturbance of seniority—Show-cause

notice—When to be given—Legal maxim Audi alteram partem—Importance of—Order containing words "after careful consideration of the representation"—Whether a speaking order—Decision of Government regarding seniority—Whether can be reviewed—High Court in writ jurisdiction—Whether can determine seniority.

Held, that the law of evidence considers the rules of privilege testimonial exclusion under four categories, political, judicial, professional and social. In the last three groups fall for example the privileges of jurymen, of legal advisers and of the spouses. The communications in relation to these classes are deemed priviledged and are precluded from judicial scrutiny. The first species of privilege is political, relating to secrets of State such as State papers and communications between Government and its officers and other matters of public policy. Evidence is rejected on the ground that from its reception some collateral evil would ensure to society or to third parties.

Held, that S. 123 of the Indian Evidence Act, 1872, protects from judicial scrutiny "evidence derived from unpublished official records relating to any affairs of State" except with the permission of the Officer at the head of the department concerned. The disclousure of the records of the State, by which it is proved that an employee of the Government had been prosecuted on different occasions for offences alleged to have been committed under section 302 of I.P.C. and later under sections 279, 392, 397 and 411 read with section 34 of I.P.C. and that departmental enquiries had been instituted on several grave charges including one of corruption, in which he had to be suspended; and his having proceeding to U. K. defying the order of the Government withholding permission and also his having committed serious misconduct while in service there and despite the dismissal of his representation in 1955 his being given seniority eleven years later that he was recepient of undue favours, which his character roll would disclose, do not contravene the principle underlying S. 123. When the probity of the conduct of a public servant is a matter in issue, the State cannot screen his conduct from the purview of the Court on the ground that it is an affair of state and is, therefore, sacrosanct, and consequently must be insulated from the reach of the court as evidence. The sanctity of secrecy should yield to the necessity of getting all the facts, and public interest is served best by the paramount requirement, that all facts relating to a litigated issue should be available to the court to the end that the truth may be ascertained. The law provides that State secrets and communications to, from and between public officers relating to affairs of State are privileged against disclosure. This broad principle is reflected by section 123. If that is the legislative policy which has been claimed in the circumstances of the case, the court should not negate it, by substituting its own judgment. The nature of information sought in this case cannot be regarded as a secret of State in commonly accepted sense, the information asked did not involve any question of

international politics, military defence, or the security of the State, or public safety. The papers with respect to which privilege has been claimed were certainly not State papers, despatches, minutes, or documents of any such description which relate to the carrying on of the Government, or were connected with the transaction of public affairs, nor was any question of peace or war involved.

Held, that in his affidavit the officer claiming privilege should furnish a clue as to the jeopardy to which the Government might be exposed if information was furnished to the Court regarding the conduct of a government servant. It should be disclosed in what way such a disclosure would be detrimental to the public interest.

Held, that non-disclosure of matters involving secrets of State in Military or international affairs is a well-recognised and a geniune ground for claiming testimonial exemption. Secrecy is legitimately invoked for acts of pending international negotiations or military directions against foreign enemies. Such matters ought to be protected on the ground that these are secret affairs of the State. Under a system of representative government and removeable officials, there are no facts which require to be kept secrets with that solidity which defies even the enquiries of a court of justice. To cover with the veil of secrecy the common routine of business is an abomination as it is generally desired for the purpose of "parties and politics" or personal self-interest of bureaucratic routine. An invocation of supposed inherent secrecy in all official acts and records can land itself "to mere sham and evasion". The privilege is a narrow one and most sparingly to be exercised, If a privilege has been claimed for an extraneous purpose not germane to the underlying principle and to conceal from the purview of the Court the alleged misconduct of a government servant and the way in which his conduct has been condoned, glossed over or palliated, and the decision as to seniority which was earlier arrived at after mature considerations and acted upon for 11 years had been disturbed to his disadvantage, it should not be allowed:

Held, that if seniority list is revised without notice to others and by placing a junior officer above a senior officer, the new revised list is bad, even if show-cause notice was given to him before proposed reversion as his reversion was consequent on the disturbance of his seniority and the opportunity was given subsequent to the decision adverse to him having been taken. The giving of *ex-post facto* notice after a *fait accompli*, is contrary to all cannons of law and equity. The show-cause notice should be given before changing the seniority and not against reversion contemlpated in the notice: The principle *audi alteram partem* (hear the other side) is fundamental and must be adhered to in all matters of quasi-judicial nature when contending claims of two persons have to be adjudicated upon. The impartiality of tribunal is apt to be gravely imperilled when one of the parties has not been given opportunity to appear before it. The

equilbrium of impartiality is thereby upset. The essence of the rule of natural justice is notice, adequate opportunity to be heard, consideration and solemn judgment. It was pithlily put by Sir Edward Coke, (i) vocate (ii) interrogate; and (iii) judicate, that is to say, call, question and adjudicate. The principle has been recognised from the hoary past and its sanctity has been recognised throughout. The disturbance of seniority followed by reversion will result in measurable loss. The omission to give notice while disturbing seniority after a long time results in substantial and manifest injustice.

Held, that the words "after careful consideration of the representation ....." does not make an order a 'speaking order'. The words "careful consideration" in the absence of any reasons do not supply the lacuna and the order cannot be supported.

Held, that the Government cannot review its previous order at its sweet will and reshuffle seniority of its officers according to its discretion and if the discretion is used in that way, it can be interfered with by the courts:

Held, that the High Court cannot determine the question of seniority while disposing of a writ petition. Apart from the fact that the adjudication of such a point is strictly not within its domain, sometimes it cannot adequately do so, because the complete material has not been placed before it. The determination of seniority in accordance with law and the rules is the function of the Government. The High Courts steps in only when the basic rules pertaining to natural justice are transgressed. The High Court should avoid impinging upon the province of the Government.

Petition under Articles 226, 227 *and* 311 *of the Constitution of India, praying that a writ in the nature of* Certiorari, Mandamus *or any other appropriate writ order or direction be issued quashing the orders passed by the Respondents* 1, 2 *and* 3.

J. L. Gupta, Advocate, for the Petitioner.

B. S. Dhillon, Additional Advocate-General, Punjab, B. S. Shant, M. R. Sharma, Advocates, for Respondents.

ODRER

Tek Chand, J.—This is a petition of writ under Articles 226, 227 and 311 of the Constitution of India praying that an appropriate

writ in the nature of *certiorari* or *mandamus* be issued quashing the orders passed by respondents 1, 2 and 3 as per Annexures K and N. It is also prayed that the authorities be directed to restore the petitioner to his original position, rank and status in the government service and also his seniority as per original seniority list. There was also a prayer that the respondents be directed to produce personal files of the petitioner as also of Jaswant Singh and Bahadur Singh, respondents 4 and 5 and other records specified in the last paragraph of the petition. The petitioner who at the time of presenting the petition was Divisional Inspector Wild Life, Amritsar, had joined the department of Game Preservation in Punjab at Lahore in the year 1947 before the partition of the country. He was posted as Game Inspector, Wild Life in 1947 in the scale of Rs. 80—5—120/5—140 with effect from 1st of August, 1947 (*vide* Annexure A). Prior to this appointment, the petitioner had served the Indian Army as a Hawaldar, Clerk from 11th of November, 1941 till 12th of November, 1946 for a period of five years and two days (*vide* Annexure B). Under the rules, the period of war service was to be counted towards his service in the department and its benefit had been granted to him towards the fixation of his seniority, pay, etc. On this basis, the petitioner claimed that he should be deemed to have joined the duties as Game Inspectcor on 29th of July, 1942. The petitioner, however; was allowed war service benefit for the period commencing 11th November; 1941 to 31st March; 1946; in all four years, four months and twenty one days; and on this basis, his date of appointment would be deemed 11th of March, 1943 after adding four years; four months and twenty one days to the date of his actual appointment. On the question of petitioner's seniority, the decision was taken after a considerable time and the orders of the Government were conveyed to him on 19th of May, 1954 by the Deputy Secretary to Government, Punjab. A seniority list of Game Inspectors was issued by the Government on 19th May, 1954, after considering the representation of the petitioner (*vide* Annexure C). After allowing him the war service concession in the fixation of seniority, his name was placed at No. 1 among 12 Game Inspectors.

It may be stated that the department was made permanent with effect from 1st of January, 1946 and formerly it was only temporary and, therefore, there were no permanent posts of Game Inspectors in the department prior to 1st January, 1946. The seniority list was again revised by the Government,—*vide* memorandum, dated 18th April, 1955—after considering the representation of Ved Parkash,

Game Inspector and the petitioner was placed at No. 4, one Kuldip Singh at No. 5 and the contesting respondent No. 4 Jaswant Singh at No. 6 (*vide* Annexure D).

The petitioner was selected for the post of a Selecction Grade Inspector in the scale of Rs. 120—8—160/8—200 with effect from 1st April, 1955. Under orders of the Government of Punjab, Game Preservation Department, the petitioner along with one Kuldip Singh was selected to the two posts of "Selection Grade",—*vide* Annexure E. With effect from 21st of February, 1957, the petitioner earned a further promotion as Divisional Game Inspector in the grade of Rs. 140—10—200/10—300,—*vide* Annexure F.

On 27th of May, 1961, an office order was passed to the effect that the petitioner who was selected as Selection Grade Game Inspector with effect from 1st of April, 1955, was made substantive permanent selection grade Inspector from the same date. In other words, this was given retrospective effect (*vide* Annexure G).

On 13th of September, 1963, an order was issued by Shri G. S. Dhillon, Chief Conservator of Forests, Punjab, appointing the petitioner as officiating Divisional Inspector from 25th of April, 1960, against the vacancy fallen vacant due to the appointment of one Shri Aminder Singh,—*vide* Annexure H. The petitioner contends that as no permanent vacancy occurred, he could not be confirmed and he continued to be treated on probation.

On 25th of September, 1964, he was allowed to cross the efficiency bar in the pay scale of Rs. 140—10—200/10—300 with effect from 21st of February, 1964,—*vide* Annexure I. So far the petitioner had no serious ground for complaint. His seniority was up set on 6th of January, 1966, on entertainment of a representation dated 27th April, 1960 made by respondent Jaswant Singh who was then Inspector Wild Life. It was stated in the office order that on consideration of Jaswant Singh's representation, the Government had decided that the seniority list of Inspectors Wild Life be changed with the result that the petitioner was at first put at No. 7 but it was said that in view of war service benefits granted to him, his final seniority among Inspectors was approved placing him at No. 5 while retaining respondent Jaswant Singh at No. 3,—vide Annexure H.

The petitioner maintained that the orders revising his seniority and making respondent Jaswant Singh, senior to him had been passed without giving him any notice. He alleged that the order was passed under undue pressure and as a result of influence exercised by respondent Jaswant Singh. The petitioner had urged that the final seniority list had been issued on 7th of May, 1955 (*vide* copy Annexure D), according to which his place was 4 and that of respondent Jaswant Singh, No. 6. In fact Jaswant Singh had made a representation against the allotment of seniority but this representation after having been considered at different levels was rejected and the Government conveyed its decision on 25th/ 26th September, 1955,—vide Annexure Q.

In support of the allegation that the act of authorities in lowering the seniority of the petitioner as against Jaswant Singh was *mala fide* and motivated by undue favouritism, the petitioner alleged that Jaswant Singh's record of service was exceptionally bad and he was unfit to be retained in service much less deserving of promotion and seniority for the under-mentioned reasons:—

(i) Jaswant Singh was tried for having committed murder and was also prosecuted under sections 392 and 397 read with section 34 of I.P.C. The magistrate committed him for sessions trial and the learned Sessions Judge had observed:

"It may be said that there was considerable suspicion against the accused of having participated in the murder of of the *dhobi* and having robbed . . . ."

The Session Judge, however, gave him the benefit of doubt.

(ii) Jaswant Singh was tried in another case for having committed an offence of theft under section 379 I.P.C. and also for having committed offences under sections 392, 397 and 411 I.P.C. He was found guilty by the trial court on a charge of having "dishonestly misappropriated a sum of Rs. 3.000" and was sentenced to a term of imprisonment of three months and a fine of Rs. 1,000 was also imposed on him. The appellate court acquitted him giving him the benefit of doubt. In view of the above convictions under section 408 I.P.C., Jaswant Singh was

suspended and later dismissed from service. He was subsequently reinstated after his appeal was accepted by the Sessions Judge.

Regarding the first two allegations, both the State and Jaswant Singh in their respective written statements admitted that Jaswant Singh was tried though finally acquitted. Jaswant Singh even said that the allegations levelled against him were found to be baseless, which appears to me to be an over-statement.

(iii) A departmental enquiry was instituted against Jaswant Singh in the year 1956-57 on several charges including one of corruption and in consequence thereof, he was suspended from the service. Instead of facing the enquiry, it was said, that he absented himself without cause.

(iv) It is also said that Jaswant Singh proceeded to England without obtaining permission of the department but what has been stated at the bar by the learned counsel for the State after ascertaining the facts from the official files, was that Jaswant Singh had applied for twelve months' study leave before leaving India. Leave was sanctioned on 7th April, 1956 but later on it was withheld by order dated 10th of July, 1956. He submitted his resignation on 1st of September, 1956 and left the country on 16th of September, 1956 before his resignation was accepted. From England, he sent an application on 25th of January, 1957, desiring to withdraw his resignation and that he might be treated on study leave. In May, 1957, he was informed by cablegram that he was permitted to withdraw his resignation provided he returned to India immediately which he did not. He continued to stay abroad for four years. He has been asking for grant of leave. On 24th June, 1957, the Chief Conservator of Forests informed him that he was allowed to carry on his studies and he might return to India after completion of the course. If required, he might apply for more leave. There appears to be then a change in the official attitude. On 31st October, 1957, a warning was issued for absence from duty without proper sanction. On 18th

of November, 1957, and again on 14th January, 1958, he applied for additional leave. The Government cancelled the earlier order of 31st October, 1957 on 11th of May. 1958 and placed Jaswant Singh under suspension. Charge-sheet was sent to him in England to which he sent a reply. On 11th November, 1959, it was decidced that a warning administered on 31st October, 1957 would suffice and he should be reinstated on the day he takes over as Wild Life Inspector. The Chief Conservator of Forests recommended to the Government, to regularise his leave. He has subsequently been getting different kinds of leave and ultimately they were all regularised. It may be mentioned that no permission to obtain service abroad was asked for or granted. Service in London or other places did not have the effect of terminating any lien of his service in India.

(v) It was alleged by the petitioner that while serving in the office of the High Commissioner for India, he had been committing misconduct and had illicit relations with a girl who bore him an illegitimate child. This allegation was denied in the written statement of the State though it admitted that a similar case was reported against him by Indian Embassy in Rome. Jaswant Singh merely denied it. It was alleged by the petitioner that Jaswant Singh despite his unusually bad record, series of misconducts of grave kind committed by him; had a pull with the officers and has, therefore, successfully managed to escape the evil consequences. All the violations of disciplinary rules and other improprieties that he committed were overlooked. His absence of nearly four years abroad was regularised and acts of corruption, misconduct and breaches of discipline committed by him were condoned and out of favouritism, uncalled for indulgences were shown to him and on all the offences committed by him, a cover was put, so much so that they were kept from the scrutiny of this Court by claiming privilege against their disclosure.

(vi) Although his representation had been dismissed in the year 1955, he put in another representation on 27th April, 1960, submitting that he was entitled to seniority over

and above the petitioner and several others. His representation was under consideration of the Government for nearly five years and it was on 6th of January, 1966, that the seniority list was revised and it was decided that respondent Jaswant Singh should be put at No. 3 and the petitioner at No. 5 and Kuldip Singh; petitioner in C.W. 2477 of 1966 at No. 6;—*vide* Annexure K. The petitioner feels aggrieved against the disturbance of his seniority and after eleven years.

On behalf of the State, the allegation of *mala fide* and of favour shown to Jaswant Singh were denied and it was simply stated that character rolls show that Jaswant Singh had a better record than the petitioner.

Jaswant Singh, in reply to the petitioner's allegation, stated that he was entitled to seniority as he had entered the service earlier than the petitioner and that it was open to the Government to remedy the wrong done to him at any time and no period of limitation was provided for rectification of a mistake.

The petitioner's case on the question of seniority as put by him in his petition is that it was to be reckoned with effect from the date of the substantive appointment of the particular official and where the date was the same, the next consideration for the Government to take into account was the pay and age. On the basis of these principles, the petitioner had been allotted his seniority which ought not to have been disturbed as has been done after eleven years. He also urged that the Government had considered representation of Jaswant Singh and the Government's order rejecting his representation was communicated by the Deputy Secretary to the Game Warden, Punjab, on 26th September, 1955, as follows:—

"Subject: Seniority List of Game Inspectors.

Reference your endorsement No. 3526, dated 2nd July, 1955.

After careful consideration, Government have rejected the representation of Shri Jaswant Singh, Game Inspector, Jullundur, forwarded with your endorsement under reference. He should be informed accordingly."

The petitioner also made a grievance of the fact saying that :

> "There was nothing on the record to show as to why and how was a departure necessitated after a lapse of eleven years. In any case; there seems to be no valid reason; ground or basis for this change after a lapse of such a long time."

It was also averred that the previously prevailing practice of the department was incorporated into the statutory rules framed under Article 309 of the Constitution of India. According to these rules (Punjab Wild Life Preservation Department, Class III Service Rules, 1959), the principle for seniority would be calculated on the basis of the date of the substantive appointment and in case the date was the same, then seniority would be determined on the basis of the pay or age.

It was next urged that it was imperative for the Government to afford to the petitioner an opportunity to show cause against the contemplated move or action taken in revising the seniority list. It is stated that no show cause notice was ever served on the petitioner. He was thus said to have been deprived for an opportunity to vindicate his position and to show how the re-fixation of the seniority list to the advantage of Jaswant Singh and to the detriment of the petitioner, was illegal and unjust. It was further urged that the representation of Jaswant Singh, dated 27th of April, 1960, having been made five years after a similar representation had been rejected (Annexure Q) in 1955 was made after an undue delay and on this ground deserved to be rejected.

After passing the order dated 6th January, 1966 (Annexure K), the Chief Conservator of Forests addressed a communication to the petitioner dated 7th January, 1966 (Annexure L) to the effect that the petitioner was wrongly promoted to the rank of Divisional Inspector Wild Life, with effect from 21st of February, 1957 and there were other Inspectcors who had better claims. He was, therefore, required to show cause as to why he—

> "should not be reverted from the post of Divisional Inspector Wild Life to the post of Inspector Wild Life (Selection Grade) from the same date, viz., 21st February, 1957 when you were wrongly promoted as Divisional Inspector Wild Life to enable adjustment of the person eligible for promotion".

This notice of reversion has been made in 1966 and it has the effect of putting the petitioner back to the post he held nine years earlier. To this show cause notice, plaintiff made a representation on 27th of January, 1966,—*vide* Annexure M and the petitioner had also made an oral representation before the Deputy Secretary, Finally it was ordered on 7th of October, 1966,—*vide* Annexure N that Jaswant Singh was promoted as Divisional Inspector Wild Life in the grade of Rs. 140—10—200/10—300 with effect from 21st of February, 1957 and Shri N. D. Sehgal reverted as Inspector Wild Life, Selection Grade, in the scale of Rs. 120—8—180—8—200. It was also ordered that no recovery be made from the petitioner as a result of the above-mentioned change and that no arrears should be paid to Jaswant Singh. The petitioner maintains that this order (Annexure N) was illegal, unjust and without jurisdiction and deserves to be quashed. The writ petition has been founded on the above allegations and the petitioner has prayed for the issuance of an appropriate writ of certiorari, mandamus for quashing the orders, copies of which have been attached as Annexure K and Annexure N and for directions to the authorities to restore the petitioner to his original rank and status justified by his seniority as shown in the original seniority list.

On similar allegations, Kuldip Singh has also filed a writ petition in this Court C.W. 2477 of 1966 seeking similar relief as against the seniority of Jaswant Singh over him. The detailed order is being passed in this case. Both writ petitions have been opposed by Jaswant Singh and also by the State of Punjab and the officers respondents 2 and 3.

The first grievance of the petitioner is that before submitting his reply to the show-cause notice against his reversion, he had asked the Chief Conservator of Forests to supply to him copies of orders relating to the reinstatement of Jaswant Singh after his acquittal and also a copy of the order giving the petitioner the benefit of war service,—*vide* Annexure R. To this, the petitioner was told on 25th of January, 1966,—*vide* Annexure S that this demand for copy of the reinstatement order of Jaswant Singh was irrelevant; and the department was not bound to supply him copy of the Punjab Government Memo. giving him the benefit of war service. After the writ had been filed in this court, an application was made by the petitioner on 24h of July, 1967, under section 151, Code of Civil Procedure, praying that the personal file of Jaswant Singh and also other connected records of the case may be made available to this court at the time of

the hearing of the petition. This request was allowed subject to all just exceptions on 26th of July, 1967. In reply to the above request, an affidavit of Shri S. S. Grewal, Development Commissioner and Secretary to Government, Punjab, Development, Agriculture (Forests) and Co-operative Departments was filed. He stated—

> "I, as Secretary of the Forests and Wild Life Preservation Department, am in control of and incharge of its records at Government level. I have carefully considered the relevant files and have come to the conclusion that as these contain unpublished official record relating to the affairs of the State, their disclosure would be detrimental to the maintenance and proper functioning of the public services.
>
> I do, therefore, claim privilege under section 123 of the Indian Evidence Act, 1872, regarding the relevant record to the writ petition and do not give permission to produce the said record or to give any evidence derived therefrom."

The bona fides of the claim of privilege which have been challenged, may now be considered in the background of the principles underlying the statutory exception.

The law of evidence considers the rules of privilege testimonial exclusion under four categories; political, judicial, professional and social. In the last three groups fall for example the privileges of jurymen, of legal advisers and of the spouses. The communications in relation to these classes are deemed privileged and are precluded from judicial scrutiny. The first species of privilege is political, relating to secrets of State such as State papers and communications between Government and its officers and other matters of public policy.

Evidence is rejected on the ground that from its reception, some collateral evil would ensue to society or to third parties.

Section 123 of the Indian Evidence Act protects from Judicial scrutiny "evidence derived from unpublished official records relating to any affairs of State" except with the permission of the officer at the head of the department concerned. The moot question is,

whether in the circumstances of the instant case, where it is stated that an employee of the Government who had been prosecuted on different occasions for offences alleged to have been committed under section 302 of I.P.C. and later under sections 279, 392, 397 and 411 read with section 34 of I.P.C. and that departmental enquiries had been instituted on several grave charges including one of corruption, in which, he had to be suspended; and his having proceeded to U. K. defying the order of the Government withholding permission and also his having committed serious misconduct while in service there and despite the dismissal of his representation in 1955, his being given seniority eleven years later; and further, when it was alleged that he was recipient of undue favours, which his character roll would disclose, he should have been retained in the service ? In other words, are these matters, the disclosure of which would contravene the principle underlying section 123? When the probity of the conduct of a public servant is a matter in issue, can the State screen his conduct from the purview of the court on the ground that it is an affair of State and is, therefore, sacrosanct, and consequently must be insulated from the reach of the court as evidence ? The issue is, whether the sanctity of secrecy should yield to the necessity of getting all the facts, and whether public interest is served best by the paramount requirement, that all facts relating to a litigated issue should be available to the court to the end, that the truth may be ascertained. This proposition is being challenged on behalf of the State which has chosen not to give permission to the production of the record to enable the High Court to adjudicate upon matters canvassed before it. The law provides that State secrets and communications to, from and between public officers relating to affairs of State are privileged against disclosure. This broad principle is reflected by section 123 of the Indian Evidence Act. If that is the legislative policy which has been claimed in the circumstances of this case, the court may not negate it, by substituting its own judgment. Can it be said that the nature of the information sought as to the personal conduct of an employee of the State—where it was a relevant issue—was of such consequences, to which the State should attach the privilege, and was that fairly within the intendment and purview of this section ? The information sought in this case cannot be regarded as a secret of State in the commonly accepted sense; the information asked did not involve any question of international policies, military defence, or the security of the State, or public safety. The papers which are withheld from the scrutiny of this court, and with respect to which

privilege has been claimed, were certainly not State papers, despatches, minutes, or documents of any such description which relate to the carrying on of the Government or were connected with the transaction of public affairs. Decidedly, no question of peace or war was involved,

Mr. Grewal in his affidavit has not chosen to furnish a clue as to the jeopardy to which the Government might be exposed if information was furnished to this court regarding the conduct of a Class III servant. It is not known in what way would such a disclosure be detrimental to the public interest. A non-disclosure of matters involving secrets of State in military or international affairs is a well-recognised and a genuine ground, for claiming testimonial exemption. Secrecy is legitimately invoked for acts of pending international negotiations or military directions against foreign enemies. There can be no two opinions that such matters ought to be protected on the ground that these are secret affairs of the State. The question is, can the matter in hand in the instant case, be raised to that high level of public policy ?

The stand of the type taken in this case by the head of the department, has been deprecated by the courts and the jurists. According to Professor Wigmore, under a system of representative Government and removable officials, there can be no facts which require to be kept secret with that solidity which defies even the enquiries of a court of justice. Wigmore approved of the observations that to cover with the veil of secrecy, the common routine of business is an abomination as it was generally desired for the purpose of "parties and politics" or personal self-interest or bureaucratic routine. He said "the responsibility of officials to explain and to justify their acts, is the chief safeguard against oppression and corruption." Referring to facts in relation to dealings of Government departments, which were constitutionally demandable on the floor of legislature, Wigmore observed:

> "to concede to have a sacrosanct secrecy in a court of justice is to attribute to have a character which for other purposes is never maintained,—a character which appears to have been advanced only when it happens to have served some undisclosed interest to obstruct investigation into facts which might reveal a liability."

An invokation of a supposed inherent secrecy in all official acts and records can lend itself "to mere sham and evasion" and applied in such a spirit,—

> "it tends to become merely a technical advantage on the side of that party who happens to be interested as an official and to be in possession of important proof".

There is a long cantena of decisions in which warnings have been by courts, of the menace which the supposed privilege implies to individual liberty and private right, and to the potency of its abuse. The highest courts consider that the privilege is a narrow one and most sparingly to be exercised,—*vide* Wigmore on Evidence, Volume VIII, Section 2378 A.

In *Robinson* v. *State of South Australia* (1), a privilege was claimed for communications between certain departmental officers on the ground that disclosure would be "contrary to the interests of the State" in an action by a bailor who had placed wheat under control of the State, for wheat damaged by negligence. The Privy Council cited with approval Taylor on Evidence observing "the principle of the rule is concern for public interest, and the rule will accordingly be applied no furher than the attainment of that object requires". Lord Blaneshburgh observed that the foundation of the rule was that the information could not be disclosed without injury to the public interest, and not, that the documents were confidential or official which alone was no reason for their non-production. His Lordship observed, that while the courts—

> "Must duly safeguard genuine public interests, they must see to it that the scope of the admitted privilege is not, in such litigation, extended. Particularly must it be remembered in this connection that the fact that production of the documents might in the particular litigation prejudice the Crown's own case or assist that of the other side is no such 'plain over-ruling principle of public interest' as to justify any claim of privilege. The zealous champion of Crown rights may frequently be tempted to take the opposite view particularly in cases where the claim against the Crown seems to be harsh and unfair. But such an

(1) 1931 A.C. 704.

> opposite view is without justification. In truth the fact that the documents, if produced, might have any such effect upon the fortunes of the litigation is of itself of compelling reason for their production—one only to be overborne by the gravest considerations of State policy or security". (716).

The documents in that case were primarily commercial and in the view taken by Lord Blaneshburgh, the Minister—

> "should have condescended upon some explanation of the particular and far from obvious danger or detriment to which the State would be exposed by their production".

The above observations are germane to the manner in which privilege has been claimed in this case. These observations have been followed in a large number of decisions of the High Courts in this country.

In *Mohan Singh Bath and others* v. *Emperor* (2), after referring to the view of their Lordships of the Privy Council in the case cited above, it was remarked:

> "it would be good to follow the practice of the English law namely that some indication should be given to the court as to why privilege is claimed or what affairs of State are involved in the matter. Without such indication, there is always a danger that the court may draw an adverse inference from the non-production of the document."

In *Bhalchandra Dattatraya Bubane* v. *Chanbasapsa Mallappa Warad* (3), the Bench observed:

> "English courts have insisted upon proof of some collateral evil to society or to the public to justify the rejection of documents on grounds of public policy . . ."

---

(2) A.I.R. 1940 Lahore 217.
(3) A.I.R. 1939 Bom. 237.

After bringing out the distinction between the law in India and in England, it was remarked:

> "but it is essential to bear in mind the cardinal fact that privilege does not attach to a document merely because it is a State or official document. The foundation of the claim rests on the consequences of disclosure of a communication made in official confidence whose publication, the officer to whom it is made, considers contrary to the public interests."

There is authority in support of the proposition that departmental enquiry papers are not unpublished documents relating to affairs of State,—vide *Harbans Sahai* v. *Emperor* (4), *D. Weston & others* v. *Peary Mohan Dass* (5). *Ibrahim Sheriff* v. *Secretary of State and others* (6).

Bhagwati, J., in *Chamarbaghwalla* v. *Parpia* (7), animadverting to section 123 of Indian Evidence Act, said:

> 'Affairs of State' is a very wide expression. Every communication which proceeds from one officer of the State to another officer of the State is not necessarily relating to the affairs of State. If such an argument was pushed to its logical extent, it would cover even orders for transfers of officers of Government departments, and the most unimportant matters of administrative detail which may be addressed by one officer of the State to another. That could not be within the intendment of the Act at all. What are the affairs of State within the meaning of that expression as used in section 123 of the Act has, therefore, got to be determined by a reference to the grounds on which privilege can be claimed in respect of a particular document.

A clue to the same is furnished in the observations of their Lordships of the Privy Council. (*Robinson* v. *State of South Australia*) (1).

---

(4) 16 C.W. No. 31.
(5) I.L.R. 40 Cal. 898 (918).
(6) A.I.R. 1936 Nag. 25.
(7) A.I.R. 1950 Bom. 230.

After referring to the decision of the House of Lords in *Duncan* v. *Cammell Laird & Co.* (8), Bhagwati, J., said:—

> "production should only be with-held when the public interest would otherwise be indemnified, as where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service."

Chagla, C.J., in *Lady Dinbai Dinshaw Petit* v. *Dominion of India* (9), said:

> "If, therefore, having considered the document he tells the Court that the document is one relating to affairs of State and that its disclosure will be injurious to public safety, the Court ordinarily would accept his statement if made on oath. But the statement must not be of a vague or indefinite character. He must not only indicate the nature of the document, but he must also state what injury to public interests he contemplates would result from the disclosure of the document"

In a Full Bench decision of this court in *Governor General in Council* v. *H. Peer Mohd. Khuda Bux and others* (10), Khosla, J., said:

> "I would define "affairs of State" as matters of a public nature in which the State is concerned and the disclosure of which will be prejudicial to the public interest or injurious to national defence, or detrimental to good diplomatic relations. Words very similar to these were used by Viscount Simon in *Duncan* v. *Cammell Laird and Co., Ltd.* (8).

Kapur, J., observed:

> "But the sole object of this privilege—and I have no doubt that it would be claimed in those circumstances—is that the

(8) 1942 A.C. 624.
(9) A.I.R. 1951 Bom. 72.
(10) A.I.R.1950 E.P. 228.

disclosure would be injurious to national defence or to good diplomatic relations or for the proper functioning of the public service, and it is necessary to keep that document or that class of documents secret".

Applying the principles relating to claim of privilege under section 123 of Indian Evidence Act to the facts of this case, I am left with no doubt in my mind that there was no justification whatsoever for claiming the privilege. It is difficult not to agree with the suggestion submitted on behalf of the petitioner that privilege had been claimed for an extraneous purpose not germane to the underlying principle. The object seems to be to conceal from the purview of this court the alleged misconduct of Jaswant Singh and the way in which his misconduct had been condoned, glossed over or palliated, and the decision, as to seniority which was earlier arrived at after mature consideration, and acted upon for eleven years (1955—1966), had been disturbed to his advantage.

I may now address myself to the arguments advanced by the learned counsel for the parties. On behalf of the petitioner, it has been urged that the decision with regard to fixation of seniority had been arrived at after consideration of representations made against seniority list formulated in the first instance and this was no longer reviewable after a distance of long time. The question of seniority was first determined by Director of Agriculture in 1947 which was modified,—*vide* copy of Memorandum dated 19th of May, 1954 (Annexure C). In this list, the petitioner was put at No. 1 and Jaswant Singh at No. 4. A representation was made by Ved Parkash against the seniority and it was determined by Mr. Fletcher, Secretary to Government, on 10th of May, 1955,—*vide* Annexure D. Ved Parkash was put at No. 2, petitioner at No. 4 and Jaswant Singh at No. 6. The seniority as determined by Mr. Fletcher had been acted upon till 6th of January, 1966.

The seniority list was reviewed on 6th of January, 1966 (*vide* Annexure K). It was stated that representation dated 27th of April, 1960, by Jaswant Singh for restoration of his seniority was under consideration and it has now been decided by Government that the seniority list of Inspectors Wild Life as originally approved in the pre-partition Punjab as per communication of the Director of Agriculture, Punjab, Lahore, No. 367/1138-II, dated the 20th of June, 1947, be restored. The result was that Jaswant Singh was placed at

No. 3 and the petitioner at No. 7. In view of the war service benefits granted to the petitioner, it was stated that his final seniority had been fixed at No. 5 whereas that of Jaswant Singh was kept at No. 3.

The objection of the petitioner is, that no such review could have been ordered, as firstly, rules did not confer any power of review; secondly, representation of respondent No. 4 re. his seniority was rejected by the Government on 26th September, 1955,—*vide* copy of Memorandum (Annexure Q); and thirdly there was no new material to warrant review. In the alternative, it was urged, that if at all the matter could be reviewed, opportunity to show cause should have been given before revising seniority list. The petitioner who was selected as a Selection Grade Game Inspector with effect from 1st of April, 1955, was made substantive permanent Selection Grade Inspector from the same date, i.e., 1st April, 1955, in pursuance of a notification, dated 9th of June, 1959,—*vide* Annexure G.

It was urged that seniority of Jaswant Singh and others should have been determined after show-cause notice to petitioner. If such an opportunity had been given to him, the petitioner could have shown that the previous order making him senior to Jaswant Singh was just. He could have even shown that his service should have been counted from 11th November, 1941 when he joined the Army,—*vide* Annexure B. He having been discharged on 12th of November, 1946, should have been given credit of five years and two days and not of four years, four months and twenty-one days. It was said that on this assumption, the petitioner could show that his service should have been counted from 11th November, 1941 as against Jaswant Singh who joined on 16th September, 1942. The main grievance of the petitioner was that the decision dated 6th January, 1966 (Annexure K) by which Jaswant Singh was put above him was arrived at first, without any opportunity having been given to the petitioner and others and was, therefore, bad.

By communication dated 7th January, 1966 (Annexure L) from the office of the Chief Conservator of Forests to the petitioner on the "Subject: Reversion" petitioner was told that he had been wrongly promoted to the rank of Divisional Inspector Wild Life with effect from 21st of February, 1957 and there were other persons on the seniority list of Inspectors Wild Life who were to be considered and promoted prior to his promotion against the vacancy of Divisional Inspector Wild Life. The claim of such persons for

appointment as Divisional Inspectors Wild Life being prior could not be ignored. He was served with a notice:

> "to show cause as to why you should not be reverted from the post of Divisional Inspector Wild Life to the post of Inspector Wild Life (Selection Grade) from the same date, viz. 21st of February, 1957, when you were wrongly promoted as Divisional Inspector, Wild Life to enable adjustment of the person eligible for promotion".

It may be mentioned that the petitioner was selected on 1st June, 1955 as Selection Grade Inspector in the pay scale of Rs. 120—8—160/8—300 with effect from 1st April, 1955,—*vide* Annexure E and was promoted as Divisional Game Inspector in the grade of Rs. 140—10—200/10—300,—*vide* Annexure F. The show-cause notice as per Annexure L dated 7th January, 1966, was against reversion which according to the learned counsel for the petitioner was just a formality after the petitioner's seniority had been disturbed earlier by order of 6th January, 1966 (Annexure K). The opportunity, it was said, should have been given to the petitioner before deciding his case of seniority. Reliance has been placed upon a Single Bench decision in *Madan Lal* v. *The Union of India* (11). The facts of that case are *in pari materia*. One of the contentions that had been canvassed was that the order made by the Central Government was without any notice to the petitioner and without affording him an opportunity of being heard. If opportunity had been given, the petitioner would have challenged the authority and the jurisdiction of the Government to disturb his seniority. Grover, J., remarked:

> "while deciding the question of seniority of the petitioner which is likely to affect not only his future chances of promotion but also the holding of his present job from which he has been reverted as a result of the decision of the Central Government, it was obligatory on the Government to either directly or through the Advisory Committee afford an apportunity to the petitioner in such manner as it was considered proper to make his representation or submit his explanation in

(11) 1967 Current L.J. 62.

respect of the representations of the four clerks which they had preferred against the assignment of their respective places in the joint seniority list. The petitioner admittedly was not afforded any such opportunity and it is not possible to understand how his omission to ask for a hearing would affect the matter inasmuch as there is nothing to show that he was even informed of the existence of any such representations against him. The orders which have been impugned in the matter of the fixation of his seniority in the joint seniority list would have to be quashed for the aforesaid reason. It will be for the Central Government or the Advisory Committee to re-hear and re-decide the matter, if so advised, after affording the petitioner an opportunity of being heard in the light of the observations made above."

I find myself in full agreement with the above observations.

A similar matter came up before a Division Bench of the Mysore High Court in *E. V. Seshadri* v. *State of Mysore and another* (13). The observation of H. Hombe Gowda, C.J., are applicable to the facts of this case. It was observed:

"The question is whether the revision of 1957 list was made after taking a comprehensive decision of all the representations filed by the several persons aggrieved or is one done for the purpose of assigning a rank to the second respondent on the basis of his representation only ? We have no doubt in our minds that there has not been a comprehensive revision of the first-Inter-State Seniority list of Assistant Engineers on the basis of the representations received by all the officers in response to the Notification issued in 1957. As a matter of fact the second respondent has not asserted in his counter-affidavit that the second list prepared and issued in 1963 was the result of a comprehensive revision after taking into consideration all the representations filed by the several persons simultaneously. Nor has the first respondent asserted in the counter-affidavit that it is as a result of the comprehensive revision

(13) A.I.R. 1966 Mysore 31.

of the list in the light of the representations made by several persons that the second list was prepared and issued by it. In these circumstances, we are of the opinion that the second or revised Provisional Inter-State Seniority or gradation list issued by the first respondent in the year 1963 was beyond its competence and authority and is liable to be struck down."

The observations of their Lordships of the Supreme Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (14), have an important bearing. They observed :

"We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State".

I agree with the contention of the learned counsel for the petitioner that an opportunity, which deserved being given, was not afforded to the petitioner and other concerned persons to show cause against the revision of the previous seniority list. What happened in this case was that that list had been revised without notice to others placing respondent Jaswant Singh above the petitioner. After the seniority had been determined to the detriment of the petitioner and to the advantage of respondent Jaswant Singh, the petitioner was required to be reverted. He was asked to show cause against proposed reversion. His reversion was consequent on the disturbance of his seniority and the opportunity was being given subsequent to the decision adverse to him having been taken. The giving of *ex-post facto* notice after a *fait accompli*, is contrary to all canons of law and equity. Moreover, the show-cause notice should have been

(14) A.I.R. 1967 S.C. 1269.

before changing the seniority by order (Annexure K) and not against reversion contemplated in the notice (Annexure L). The petitioner should have been told of the subsequent representation of Jaswant Singh and of his claim to his seniority over the respondent. If this had been done, the petitioner could have shown on several grounds that the claim was not justifiable. It is surprising that the Government in these proceedings has claimed a privilege in respect of the representation of Jaswant Singh. The principle *audi alteram partem* (hear the other side) is fundamental and must be adhered to in all matters of quasi-judicial nature when contending claims of two persons have to be adjudicated upon. The impartiality of the tribunal is apt to be gravely imperilled when one of the parties has not been given opportunity to appear before it. The equilibrium of impartiality is thereby upset. The essence of the rule of natural justice is notice, adequate opportunity to be heard, consideration and solemn judgment. It was pithily put by Sir Edward Coke (i) vocate; (ii) interrogate; and (iii) judicat, that is to say, call, question and adjudicate. The principle has been recognised from the hoary past and its sanctity has been recognised throughout. The applicability of this rule was considered in detail by me in *Bhikhan Bobla and others* v. *The Punjab State and others* (15). I feel satisfied that the above fundamental principle has been violated in this case and this, to my mind, is a fatal infirmity. It is hardly necessary to point out that the disturbance of seniority followed by reversion will result in measurable loss to the petitioner. It was next urged that the order dated 7th October, 1966 (Annexure N) passed after the submission of representation, dated 27th January, 1966, by the petitioner (Annexure M) was not a 'speaking order'. The words "after careful consideration of the representation . . ." with which the order begins are no satisfactory answer to the query whether it is a 'speaking order'. The words "careful consideration" in the absence of any reasons do not supply the lacuna and the order cannot be supported. The omission to give notice to the petitioner while disturbing his seniority after such a length of time has resulted in substantial and manifest injustice to him.

I may refer to one argument advanced on behalf of the respondent. It was said that it was the sweet will of the Government to review its previous order and reshuffle seniority of its officers according to its discretion and this exercise of its will

(15) A.I.R. 1963 Punj. 255=I.L.R. (1963) 1 Punj. 660 (F.B.).

cannot be interfered with by the courts. If the Government felt that the seniority as formerly fixed was erroneous, it could right the wrong even after a long time. It was said that the Government had the power to correct its errors by review regardless of time and reference was made to *N. Devasahayam* v. *The State of Madras* (16). This argument is answered by a decision of the Full Bench of five Judges of this court reported in *Deep Chand and others* v. *Additional Director, Consolidation of Holdings, Punjab, and another* (17), Dua, J., who delivered the judgment of the Full Bench referring to decisions cited before the Bench observed:

> "They clearly do not lend any support to the broad and unqualified proposition that courts are empowered to recall or review their earlier erroneous and unjust orders whenever it is discovered that the error was due to their own mistaken view on the merits of the controversy, and the observations in *Mrs. Peterson's case* clearly seem to negative it. I may observe that it is not claimed that judicial and quasi-judicial tribunals possess, in this respect, any wider or more extensive inherent power than the courts".

Referring to the observations of Cairns, L.C., in *Rodger* v. *Comptoir 'D' Escompte de Paris* (18), Dua, J., said:

> "These observations, in my opinion, clearly negative any inherent power or jurisdiction in a judicial, and if I may say so with respect, also in a quasi-judicial tribunal, to re-open a decided cause and set matters right by altering the decision merely on discovering an error in it on the merits.
>
> To concede such a wide power of review would, in my opinion, introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of quasi-judicial lawlessness, which I cannot persuade myself to

(17) I.L.R. (1964) 1 Punj. 665=A.I.R. 1964 Punj. 249 (F.B.).
(18) (1871) 3 P.C. 465 (475).
(16) A.I.R. 1959 Mad. 1.

uphold. If courts do not possess such a wide and sweeping power, it is difficult to accede such a wide power in statutory judicial or quasi-judicial tribunals".

Lengthy arguments were addressed by the parties in support of their respective claims to seniority. It will perhaps not be correct for this court to determine this question while disposing of this writ petition. Apart from the fact that the adjudication of such a point is strictly not within its domain, it cannot adequately do so because the complete material has not been placed before it and with respect to certain relevant and essential records, privilege has been claimed by the State. Even if the privilege had not been claimed, the determination of seniority in accordance with law and rule was essentially the function of the Government. This court steps in only when the basic rules pertaining to natural justice are transgressed. This court shall, therefore, avoid impinging upon the province of the Government.

There are observations made that when a matter has been finally disposed of by a competent authority, it cannot be reopened by his successor except under the law. This principle governs without doubt judicial cases. As a rule of equity and justice, similar principle deserves to prevail in departmental enquiries. (*Gursewak Singh Harnam Singh* v. *The State*) (19).

In *M. L. Chopra* v. *Union of India* (20), Narula, J., observed:

"Suffice to say that once a certain protection or benefit had been afforded to the petitioners, they were certainly entitled to be heard and entitled to be given sufficient and adequate opportunity to show cause against their being deprived of the same benefit particularly with retrospective effect. This is necessary in order to conform to the principles of natural justice which are enshrined in the guarantee of rule of law contained in Article 14 of the Constitution".

In the instant case, the order of reversion dated 7th October, 1966 (Annexure N) was retrospective taking effect from 21st

(19) A.I.R. 1954 Pepsu 129.
(20) 1967 Current L.J. 351.

February, 1957, and nine years of petitioner's service as Divisional Inspector were effaced. The petitioner had even crossed the efficiency bar as Divisional Inspector on 25th of September, 1964 with effect from 21st of February, 1964 (Annexure I).

After giving anxious consideration to the matters canvassed in this case, I feel satisfied that the petition should be allowed. The petitioner is entitled to the issuance of a writ of *mandamus*, quashing office order No. WL/28/C.C.F., dated Chandigarh, the 6th January, 1966 (Annexure K) and order dated 7th October, 1966, under signatures of Shri B. B. Vohra, Secretary to Government, Punjab, Agriculture and Forest Departments (Annexure N). I order accordingly. There will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

RAM SINGH AND OTHERS,—*Petitioners*

versus

CHIEF COMMISSIONER (CHIEF ADMINISTRATOR) UNION TERRITORY OF CHANDIGARH AND ANOTHER,—*Respondents*

Civil Writ No. 1400 of 1967

October 30, 1967

Motor Vehicles Act (IV of 1939)—S. 76—Establishment of parking places or stands for taxis—Persons using a place as Taxi-stand—Whether entitled to notice for showing cause against the place being allowed to use as a taxi-stand—Motor Vehicles Rules (1939)—Rules 7.12 (2), 7.13 and 7.22(1)—"Permit"—Meaning of—Whether a synonym of acquiescene—"Squatter"—Meaning of—Whether any right in law vests in him.

Held, that section 76 of the Motor Vehicles Act, 1939 enables or empowers the authority concerned to determine parking places. It is not a statutory obligation in the sense that the Legislature commands the authority to provide parking places and carries no penalty if this is not done. Rule 7.22 of the Motor Vehicles Rules provides for the cancellation of orders for the establishment of stands. A