

University's case, (2) that though an incorporated body, like a University, was a legal entity, it had neither a living mind nor voice. It could only express its will in a formal way by a formal resolution and so could only act in its corporate capacity by resolution properly considered, carried and duly recorded in the manner laid down by its constitution. Same rule was laid down by the Lahore High Court in *Bawa Bhagwan Dass v. Municipal Committee, Rupar* (4).

(10) I have no quarrel with the argument that the provisions of Order 41, Rule 3, Civil Procedure Code, are discretionary as is indicated by the word 'may'. But there is nothing in the circumstances of the case, to indicate that this discretion was wrongly exercised by the Additional District Judge. The result is that the appeal fails and is hereby dismissed. In the circumstances of the case, there will be no order as to costs.

R. N. M.

(4) A.I.R. 1943 Lah. 318.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

KIRPAL SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 3196 of 1968

December 20, 1968.

Constitution of India (1950)—Articles 16, 226 and 311—Punjab Police Rules—Rule 13.10 and list 'E'—For bringing the name of Assistant Sub-Inspector of Police on list E—Upper School Training Course—Whether essential—Instructions by Inspector-General of Police prescribing method of selection and age limit for such Course—Whether legal—Depriving an Assistant Sub-Inspector to go through the Course—Whether amounts to interference with his fundamental rights under Article 16—Article 226—Warning to a government servant in confidential report—High Court—Whether can interfere in writ proceedings—Article 311—Suspension of a government servant on account of criminal case against him—Junior officers to him confirmed and promoted during the suspension—Such government servant—Whether has a right to be considered for confirmation and promotion on acquittal.

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Held that the training in Upper School Course at the Police Training College, Phillaur, is an essential pre-requisite for placing the name of an Assistant Sub-Inspector on promotion List 'E' in Punjab. This qualification has not been prescribed under any rule statutorily framed but was being observed as a practice from time immemorial. (Para 10)

Held, that according to Rule 13.10 of the Police Rules, the selection for promotion as Sub-Inspector has to be made out of the Assistant Sub-Inspectors on List 'E' and at that time the necessary qualifications of a particular officer have to be taken into consideration while promoting him to the rank of Sub-Inspector of Police. Unless the name of an Assistant Sub-Inspector is borne on List 'E', he cannot be considered for promotion as Sub-Inspector of Police. In order to come on that list an Assistant Sub-Inspector has got to go through the Upper School Course. There is no provision in the rules for any selection being made of the Assistant Sub-Inspectors for being sent up for training in the Upper School Course and none can be prescribed by the Inspector-General of Police by departmental instructions. The Inspector-General has no right to deprive an Assistant Sub-Inspector of Police of the opportunity of going through that Course by prescribing the method of selection or the age limit. An Assistant Sub-Inspector is not entitled to be promoted as Sub-Inspector of Police merely because he has gone through the Upper School Course and his name is brought on list 'E'. His selection for promotion will be made after his name is brought on List 'E' and his comparative merit will be considered along with the other Assistant Sub-Inspectors on the List. The Upper School Course is held by the Inspector-General and is entirely under his control and no Assistant Sub-Inspector can get the training anywhere else. Not to send up the name of an Assistant Sub-Inspector for Upper School Course in order to enable him to qualify for his name being brought on List 'E' amounts to interference with his fundamental right guaranteed under Article 16 of the Constitution for seeking promotion to the higher post. It is no doubt true that no public servant has the right to be promoted but he has the right to be considered for promotion, if eligible. If the Government prescribes any qualification for being eligible, it must also provide opportunity to the officer concerned to acquire that qualification and if the examination or a training course is held or conducted by the Government, every officer willing to undergo that examination or course in order to qualify himself for promotion should be allowed to pass that examination or go through that course. No obstacle can be placed in his way by prescribing a method of selection or age limit. (Paras 10 & 11)

Held, that the warning given to the government servant in his confidential report cannot be interfered with by a High Court in exercise of its powers under Article 226 of the Constitution. The High Court cannot substitute its own opinion for that of the appropriate authority who has to judge the working of a public servant and write the confidential report. (Para 16)

Held, that if a government servant, entitled to confirmation and promotion, is superseded because he is under suspension as a result of the criminal case against him and during the period of his suspension his juniors are confirmed and promoted to higher rank, he has the right to be considered for confirmation

and promotion on acquittal of the criminal charge. If he had not been suspended his claim for confirmation and promotion in due course would have been considered on the strength of his service and record. A writ of *mandamus*, therefore, can be issued to the Government to perform its duty and to consider whether, having regard to the seniority and fitness of the government servant, he should have been confirmed and promoted on the relevant dates when the officers junior to him were confirmed and promoted. (Paras 17 and 18)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus or any other appropriate writ, order or direction be issued ordering the respondents Nos. 2-3 to depute the petitioner to undergo the Upper School Training Course at Phillaur Training School which commenced on 2nd October, 1968, and that after the completion of the said course the petitioner be deemed to have been confirmed as A.S.I., and promoted to the rank of Sub-Inspector with effect from the date on which his next below junior was confirmed and promoted and quashing the adverse reports dated 30th November, 1964, and 22nd April, 1965.

ABNASHA SINGH, AND J. S. CHAWLA, ADVOCATES, for the Petitioner.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

TULI, J.—Kirpal Singh, petitioner was enlisted as a Foot Constable in the province of Punjab on 4th January, 1941. He passed the Lower School Training Course at Phillaur in the year 1947 and was then promoted as Head Constable. He was confirmed as Head Constable in the year 1951 but was dismissed in 1954 on a charge of corruption after a regular departmental enquiry. He was, however, reinstated on 18th February, 1956, and was admitted to the Provisional List "D" in the year 1957.

(2) The petitioner passed the Intermediate School Course at the Police Training College at Phillaur in 1961 and was then admitted to the confirmed List "D". He was promoted as officiating Assistant Sub-Inspector in the same year. In that year the petitioner was at No. 1 in List "D" whereas Sarvshri Asa Ram, Tarlok Singh and Manmohan Singh were at Nos. 2 to 4, respectively. Sarvshri Gurnam Singh, Sardul Singh and Shamsheer Singh were added to List "D" in 1962.

(3) In October, 1964, the petitioner was posted in the Criminal Investigation Agency, Government Railway Police, at Ambala Cantt and he was arrested in connection with a criminal case

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under section 379, Indian Penal Code (Case F.I.R. No. 236, dated 13th October, 1964) and was suspended from service on 7th November, 1964. He was tried along with Rameshwar, a pick-pocket, and Constable Jai Singh. The allegation against him was that he was instrumental in getting the pocket of Mangat Ram picked at Ambala Railway Station by Rameshwar and got his share of Rs. 1,500 from him. On 28th February, 1967, Shri Jagbhusan Garg, Special Railway Magistrate, Ambala Cantt., exercising the powers of the Judicial Magistrate of the First Class, convicted the petitioner under section 221, Indian Penal Code, and sentenced him to undergo rigorous imprisonment for nine months and to pay Rs. 1,500 by way of fine. He was acquitted by the learned Sessions Judge, Ambala, on appeal by order, dated 21st April, 1967. The State filed an appeal against his acquittal in this Court (Criminal Appeal No. 660 of 1967) which was dismissed in limine on 14th September, 1967, by a Division Bench consisting of Gurdev Singh and Jindra Lal, JJ. The petitioner was reinstated in service on 26th May, 1967 as a result of his acquittal by the learned Sessions Judge.

(4) During the period of twenty-nine months that the petitioner remained under suspension, a number of officiating Assistant Sub-Inspectors junior to him were sent to undergo the Upper School Course Training at Phillaur and on completion thereof were confirmed as Assistant Sub-Inspectors and were also promoted as Sub-Inspectors of Police. This allegation has not been admitted in the return where it has been pointed out that Shri Asa Ram passed the Upper School Course in 1966 and still is officiating Assistant Sub-Inspector although he was promoted as Sub-Inspector on 1st April, 1966. Shri Tarlok Singh passed his Upper School Course in 1966, was confirmed as Assistant Sub-Inspector on 21st September, 1967 and was promoted as Sub-Inspector on 28th August, 1968. He was posted in a leave vacancy as Sub-Inspector from 15th May, 1965 to 30th September, 1965. Shri Manmohan Singh passed his Upper School Course in 1966, was confirmed as Assistant Sub-Inspector on 5th May, 1963 and was appointed Sub-Inspector on 22nd December, 1966 against a vacancy in C.I.D. where he is on deputation. Shri Gurnam Singh passed the Upper School Course in 1967 and is on probation for two years since 15th July, 1968 and was promoted as Sub-Inspector on 29th August, 1968. Shri Sardul Singh passed his Upper School Course in 1963, was confirmed as Assistant Sub-Inspector on 24th September, 1966 and was promoted as Sub-Inspector on 23rd November, 1964. Shri Shamsheer Singh passed

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his Upper School Course in 1968, is still officiating Assistant Sub-Inspector since 27th December, 1963 although promoted as Sub-Inspector on 10th October, 1968. It is further stated that during the period of suspension of the petitioner the promotions of other Assistant Sub-Inspectors junior to him could not be withheld and for this reason the petitioner had not been superseded unlawfully.

(5) On 30th November, 1964, when the petitioner was under suspension, an adverse report on his working for the period 1st April, 1964 to 30th September, 1964 was issued to him as under:—

- “(1) Honesty ... Corrupt.
 (2) Reliability ... Unreliable.
 (3) General remarks ... Is corrupt and harbours criminals.

The above-cited remarks are brought to your notice and you are hereby warned to improve the above-said lapses. A written acknowledgement in token of your having received this warning should be sent to my office for record.”

Again on 22nd April, 1965 while the petitioner was still under suspension and was being tried for the offences under sections 379/221, Indian Penal Code, a copy of the annual confidential report on his working during the year 1964-65 was conveyed to him which is as under :—

“In the annual confidential report on your working during the year 1964-65, you have been described as under :—

- (1) Honesty ... Corrupt.
 (2) Reliability ... Is not reliable.
 (3) General Remarks ... A corrupt officer who has mixed up with notorious pick-pockets like Ramesh of Delhi, in fact was instrumental in getting the pocket of Mangat Ram picked at Railway Station, Ambala Cantt., and thereafter getting his share of Rs. 1,500 from him. He was arrested in case F.I.R. No. 236, dated 13th October, 1964, which is still under investigation.

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The above-said 'remarks' are brought to your notice and you are hereby warned to improve your honesty and reliability. Receipt for having received the said lapses may please be acknowledged on the second copy which may please be forwarded to this office for record in your personal file."

The petitioner made two representations against the said warnings and adverse remarks which were rejected,—*vide* memo No. 21558/B, dated 8th August, 1966, from the Inspector-General of Police, Punjab, to the Assistant Inspector-General, Government Railway Police, Punjab. This rejection was made before the criminal case had been finally decided by even the trial Court.

(6) Under Punjab Police Rule No. 13.10 a list known as List "E" is maintained of all Assistant Sub-Inspectors who have been approved fit for promotion as Sub-Inspectors. The rule is in the following terms :—

"13.10—

- (1) A list of all Assistant Sub-Inspectors, who have been approved by the Deputy Inspector-General as fit for trial in independent charge of a police station, or for specialist posts on the establishment of Sub-Inspectors, shall be maintained in card index form by each Deputy Inspector-General. Officiating promotions of short duration shall ordinarily be made within the district concerned [*vide* sub-rule 13.4(2)], but vacancies of long duration may be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector-General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in the form No. 13.9(3) by the 15th October, in addition to the annual report to be submitted by the 15th April, in accordance with Police Rule 13.17(1).
- (2) No Assistant Sub-Inspector shall be confirmed in a substantive vacancy in the rank of Sub-Inspector unless he has been tested for at least a year as an officiating Sub-Inspector in independent charge of a police station in a district other than that in which his home is situated."

In the month of September, 1967, after his re-instatement, the petitioner made an application for being deputed to undergo the Upper School Course Training at the Phillaur Training College. His name was recommended by the Sub-Divisional Officer, Ferozpur but the Assistant Inspector-General of Police turned down his request on the ground that the appeal of the State against his acquittal was still pending in the High Court. The Assistant Inspector-General of Police surrendered the seat which was available for one Assistant Sub-Inspector to be sent to the Upper School Course Training. The petitioner interviewed the Inspector-General of Police, Punjab (Kanwar Shamsheer Singh) who informed him that the selection for the Upper School Course Training rested with the Board. He was interviewed by the said Board but was not selected. Another Board for selection of Assistant Sub-Inspectors for Upper School Course training met on 26th March, 1968, who recommended the petitioner for being sent for that course but since he was overage, his case was sent to the Inspector-General of Police for relaxation of the age limit. He was medically examined and declared fit. The Inspector-General of Police directed the petitioner to appear before another Board at Chandigarh and that Board, after interviewing the petitioner, declared that if (a) there is good report of the petitioner's work during the next six months and (b) the district authorities recommend him, then the petitioner would be sent for the Upper School Course Training. The Inspector-General of Police also indicated that the petitioner would be sent for the course if his work would be good during the next six months. The petitioner was posted as Incharge Railway Police Post, Rajpura, with effect from 30th May, 1968, where he did good work and earned good reports. In September, 1968, Shri Daljeet Singh Dhillon, I.P.S., Assistant Inspector-General of Police, made only one recommendation which was of the petitioner, for the relaxation of age. The matter then was considered by a Board consisting of Shri A. S. Middha, I.P.S., D.I.G., C.I.D., Shri Parkash Chand, I.P.S., A.I.G: (1) and Shri B. R. Kapur, A.I.G. (2) who was to make selection of Assistant Sub-Inspectors for the Upper School Course which was to commence from 2nd October, 1968. The said Board rejected the petitioner's name without interviewing him. The petitioner has stated that the basis of rejection was the warning and adverse remarks communicated to him as stated above. This fact is denied by the Inspector-General of Police in his return. He has asserted that the Board took into consideration his record of service as a whole and did not recommend his name for relaxation in the prescribed age limit. Another reason

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for rejecting him was that he had not been confirmed as an Assistant Sub-Inspector. The petitioner then filed the present writ petition in which the decision refusing to depute the petitioner for undergoing the Upper School Course at the Police Training College at Phillaur which commenced on 3rd October, 1968 has been challenged as illegal, without jurisdiction and void for the following amongst other reasons :—

- (i) The holding of a test by a Selection Board to approve of Assistant Sub-Inspectors for the Upper School Training Course is not warranted by the Punjab Police Rules.
- (ii) Refusal to depute the petitioner for undergoing the said course is tantamount to withholding his promotion to the next step, i.e., Sub-Inspectorship which constitutes imposition of a penalty.
- (iii) The two warnings and adverse remarks (Annexures 'B' and 'C') constitute the only basis for the said refusal. The said adverse remarks related to the period when the petitioner was under suspension. He was undergoing trial in a criminal Court of law on a false charge. In administering the said warnings (which by themselves constitute imposition of a penalty) the authorities assumed the petitioner to be guilty of the offences for which he was being tried. The said adverse reports (warnings) were passed without jurisdiction and *mala fide*.
- (iv) The seniority according to List 'D' was disturbed without cause. On his reinstatement into service after twenty-nine months' suspension during which he underwent a trial on a criminal offence and from which he was acquitted honourably, the petitioner was entitled in law to be confirmed and promoted with effect from the date on which his next below junior was confirmed and promoted.

The petitioner prayed for a writ of *mandamus*—

- (a) directing respondents No. 2 and 3 to depute the petitioner to undergo the Upper School Training Course at the

Phillaur Training College which commenced on 2nd October, 1968;

- (b) that after the completion of the said course, the petitioner be deemed to have been confirmed as Assistant Sub-Inspector and promoted to the rank of Sub-Inspector with effect from the date on which his next below junior was confirmed and promoted; and
- (c) adverse reports (warnings), Annexures 'B' and 'C' be quashed.

(7) At the hearing the learned counsel for the petitioner has modified his prayer (b) by saying that he had inadvertently written the words "after the completion of the said course". In fact his prayer is that he should be deemed to have been confirmed as Assistant Sub-Inspector with effect from the date on which his next below junior was confirmed and promoted.

(8) In the petition it has been stated that during his service a petitioner had been granted 34 commendation certificates with cash prizes. In Ambala alone where he served in the C.I.A. the petitioner was granted 16 commendation certificates and cash prizes of Rs. 200 before the criminal case was started against him. In reply it has been stated by the Inspector-General of Police that the petitioner was granted 47 commendation certificates out of which he got cash reward in 26 cases. It is admitted that he was granted 16 commendation certificates while he was serving in the C.I.A. at Ambala but it is added that 3 were issued after the criminal case had been started. Out of these he obtained cash rewards of Rs. 200 only in 10 cases.

(9) The first point that has been argued before me is whether respondents No. 2 and 3 have any power to refuse to send the petitioner for Upper School Course in the Police Training College at Phillaur. It is admitted by both sides that there is no rule which makes a provision for the selection of Assistant Sub-Inspectors for being sent to that Course. It has been stated in the petition as under :

Although this Police Rule (13.10) does not lay down that the Assistant Sub-Inspectors before their names are enlisted in List 'E' have to undergo a course of training called the

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'Upper School Course' of training at the Phillaur Training College, but this has been the practice for a long time. Till a few years ago the Assistant Sub-Inspectors used to be sent for the 'Upper Course' in the order of their ranking on List 'D'. But for the past few years a new practice has been started of the appointment of a Board for selection of Assistant Sub-Inspectors for training in the 'Upper Course'. According to this practice the age limit of 45 years has also been prescribed, relaxable by the authorities in suitable cases."

In reply to this it has been stated in the return as under :—

"All Assistant Sub-Inspectors except exemptees have to pass the Upper School Course before their names are brought on promotion list 'E'. According to Police Rule 13.1(2) no lower subordinate is ordinarily entrusted with the independent conduct of the investigation or the independent charge of the police station before he has passed the Courses prescribed for and has been tested and given practical training in the rank of Constable and Head Constable. From time immemorial Upper School Course is a prescribed course to make an Assistant Sub-Inspector eligible for placing his name on promotion List 'E'. This fact is admitted by the petitioner himself. The Departmental Promotion Committees are only advisory Committees and they have been constituted with a view to ensure that the promotions are made on merit and extraneous influences do not come into play with regard to them; that fair chance is given to every one eligible for promotion. Inspector-General of Police is competent to prescribe courses and tests required to be passed by the police official under rule 13.1 of the Punjab Police Rules under sections 12 and 7 of the Police Act, 1861."

(10) It is thus clear that the training in Upper School Course at the Police Training College, Phillaur, is an essential pre-requisite for placing the name of an Assistant Sub-Inspector on promotion List 'E'. This qualification has not been prescribed under any rule statutorily framed but was being observed as a practice from time immemorial. It has not been denied by the respondents that during those days every person on List 'D' used to be sent for the Upper School Course in the order of seniority on that List, that is, every person on List 'D'

used to get his chance of being sent up for that Course in his turn. This practice has now been varied since 1964 as a result of the instructions issued by the Inspector-General of Police by memo No. 21146-206/B, dated 25th August, 1964, and is based on the recommendations of the Police Commission. According to these instructions the selection for Upper School Course has to be made by a Committee from amongst the confirmed Assistant Sub-Inspectors of Police who are below 45 years in age and have completed five years since the passing of the Intermediate School Course. The age can, however, be relaxed by the Committees. As a result of these instructions every officer whose name is borne on List 'D' has no right to be sent to the Upper School Course although this is an essential qualification for further promotion. The old practice has been varied by mere instructions which have no statutory force. These instructions are not in accordance with any rule but in fact go contrary to the rules and the old practice. According to the previous practice any person on List 'D' was entitled to be sent up for the Upper School Course in order of seniority and after passing that Course his name was brought on List 'E' and it was at the time of promotion that the suitability used to be considered. According to the present instructions the suitability is considered before any officer is sent up for the Upper School Course. In this connection the prescribing of age limit arbitrarily at 45 is not understood. These instructions are, thus, contrary to the rules and the old practice cannot be allowed to take the place of the rules. There is no provision in the rules for any selection being made of the Assistant Sub-Inspectors for being sent up for training in the Upper School Course and none can be prescribed by the Inspector-General of Police by departmental instructions. This matter was considered by Grover, J. (as his Lordship then was) in *Lakshya Vir Head Constable v. Punjab State* (1). This was a case of a Head Constable and before he was promoted as officiating Head Constable a test was held by the Superintendent of Police, Hissar. It was contended by the petitioner in that case that the holding of the examination was contrary to the rules and the petitioner was entitled to be promoted as officiating Head Constable without taking into consideration the result of that examination. It was held by the learned Judge as under :—

“I have no manner of doubt that the examinations which were conducted by the Superintendent of Police are not at all contemplated or covered by Rule 13.8(2) nor can I persuade

(1) 1967 S.L.R. 706.

myself to accept that under Rule 13.1 the holding of the examinations by the Superintendent of Police would be the proper method for judging efficiency and honesty. There are various other ways of finding whether an officer is honest and efficient and a good deal would depend on the actual reports of his work by his superior officers relating to efficient and honest discharge of duty. I am, therefore, satisfied that the petitioner has a genuine grievance when the result of the examinations held by the Superintendent of Police was taken into consideration while deciding whether he should be put on probation as a Head Constable."

Another grievance of the petitioner in that case was that he had not been sent up for the Intermediate Training Course although he became eligible for the same in the session commencing from 1st April, 1963. It was pointed out that according to the petitioner's seniority on list 'C' his turn for promotion to the rank of Head Constable on probation fell due in the year 1962 and thereafter he would have become eligible to be sent up for Intermediate Training Course. The reply was that the petitioner was not confirmed in the rank of Head Constable and had not gained experience in investigation work and he was not eligible for being sent up for the Intermediate Training Course at Phillaur. It was also stated in the written statement that according to the departmental instructions selection for Intermediate Training Course was made from among the confirmed Head Constables who had passed Lower School Course. It was contended by the petitioner's learned counsel that departmental instructions could not override the rules and in this connection he relied on Rule 12.10-A of the Police Rules in which it is provided *inter alia* that after the Lower School Course as soon as selection grade constables are confirmed and they continue to receive good reports, they will be deputed to take the Intermediate Training Course when they have six years' service. The learned Judge observed "that there does appear to be a conflict between the departmental instructions and the aforesaid provisions in Rule 12.10-A. It is well settled that departmental instructions cannot override the Rules and, therefore, the petitioner is entitled to say that the respondents should follow the Rules and not departmental instructions in the matter." In the result the learned Judge directed the respondents in that case to decide the question of promotion of the petitioner without taking into consideration the result of the examinations held by the Superintendent of Police, Hissar, and to act strictly in accordance with the Rules. It was

further directed that the eligibility of the petitioner for being sent up for the Intermediate Training Course should be decided in accordance with the Rules and in complete disregard of the departmental instructions.

(11) The learned counsel for the petitioner has brought to my notice a judgment of P. C. Jain, J., passed in *Mohinder Singh v. Inspector-General of Police, Punjab and others* (2), in which the petitioner had made a grievance that his claim for training in the Intermediate School Course at Police Training College, Phillaur, had been illegally ignored on the ground that he had not passed the test which had been prescribed by the Inspector General of Police. The learned judge relied upon the judgment of Grover, J. in *Lakshya Vir, Head Constable v. Punjab State* (supra) (1) and the judgment of Gurdev Singh, J., in *Ram Kishan v. The Inspector-General of Police Haryana and others* (3), and allowed the petition with a direction to the respondents to decide the question of selection of the petitioner in accordance with the rules without taking into consideration the result of the examination held by the Selection Board and to depute the petitioner to the Police Training College, Phillaur, for Intermediate School Course. It is thus evident that the selection of Assistant Sub-Inspectors for being sent for Upper School Course to the Police Training College at Phillaur, by the Selection Board Constituted under the instructions of the Inspector-General of Police, referred to above, cannot be sustained, as authorized by any statute or rule. In fact the instructions in this regard go counter to the Police Rules. Under these instructions the selection is made before an Assistant Sub-Inspector is sent up for training in Upper School Course and age limit has been prescribed as 45 years which is relaxable in appropriate cases by another Selection Board. According to Rule 13.10 of the Police Rules; the selection for promotion as Sub-Inspectors has to be made out of the Assistant Sub-Inspectors on List 'E' and at that time the necessary qualifications of a particular officer have to be taken into consideration while promoting him to the rank of Sub-Inspector of Police. Unless the name of an Assistant Sub-Inspector is borne on List 'E' he cannot even be considered for promotion as Sub-Inspector of Police. In order to come on that List an Assistant Sub-Inspector has got to go through the Upper School Course and in my opinion, the respondents have no right to deprive him of the opportunity of

(2) C.W. 1378 of 1968 decided on 3rd September, 1968.

(3) C.W. 2774 of 1967 decided on 11th July, 1968.

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going through that Course by prescribing the method of selection or the age limit. An Assistant Sub-Inspector is not entitled to be promoted as Sub-Inspector of Police merely because he has gone through the Upper School Course and his name is brought on List 'E'. His selection for promotion will be made after his name is brought on List 'E' and his comparative merit will be considered along with the other Assistant Sub-Inspectors on the List. The Upper School Course is held by the respondents and is entirely under their control and no Assistant Sub-Inspector can get that training anywhere else. In my opinion, not to send up the name of an Assistant Sub-Inspector for Upper School Course in order to enable him to qualify for his name being brought on List 'E' amounts to interference with his fundamental right guaranteed under Article 16 of the Constitution for seeking promotion to the higher post. It is no doubt true that no public servant has the right to be promoted but he has the right to be considered for promotion, if eligible. If the Government prescribes any qualification for being eligible, it must also provide opportunity to the officer concerned to acquire that qualification and if the examination or a training course is held or conducted by the Government, every officer willing to undergo that examination or course in order to qualify himself for promotion should be allowed to pass that examination or go through that course. No obstacle can be placed in his way by prescribing a method of selection or age limit. The relaxation of the age limit at the whim of a Selection Board can also not be sustained. It has been vehemently argued by the learned counsel for the respondents that the method of selection by a Board has been prescribed by the said instructions in order to avoid chances of favouritism or arbitrariness in the matter of selection. But, as I have held above, the respondents are not at all justified in prescribing the course of selection by the instructions. In case the respondents wish to adopt the course they should amend the Police Rules accordingly so that statutory authority is bestowed on the method of selection. In the absence of the amendment of the Police Rules the old practice, which entitled every officer on List 'D' to go for Upper School Course in order of seniority, must continue to prevail in case the passing of that course is essential before the name of an Assistant Sub-Inspector is brought on List 'E', for being considered for promotion as Sub-Inspector of Police. For all these reasons I hold that the respondents were not justified in not sending the petitioner for Upper School Course in the Poice Training College at Phillaur.

(12) The learned counsel for the respondents has invited my attention to Rule 1.2 of the Punjab Police Rules wherein it is stated that "the responsibility for the command of the police force, its recruitment, discipline, internal economy and administration throughout the general police districts vests in the Inspector-General of Police. He is head of the Police Department; and is responsible for its direction and control and for advising the Provincial Government in all matters connected with it. In the discharge of his duties as Inspector-General and in the execution of orders of Government he is bound to act in conformity with the system and regulations regarding the functions, discipline and administration of the force contained in the Police Act (V of 1861) and in these rules. Orders of the Provincial Government affecting the police force, in whole or in part, will be issued through him". He has also placed his reliance on Rule 13.1 of the Police Rules which is as under :—

13.1 (1). "Promotion from one rank to another, and from one grade to another in the same rank; shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments within a time-scale."

From the reading of these rules it is clear that the Inspector-General of Police is the head of the Police Department but in the discharge of his duties he has to act in accordance with the Police Act and the Police Rules. He cannot, at his own arbitrary whim or caprice, issue instructions which run counter to the Police Rules. No. 21146-206/B, dated 25th August, 1964, issued by the Inspector-General of Police, Punjab, run counter to the Police Rules and, therefore, these instructions cannot be sustained on the basis of Rule 1.2 of the Police Rules. Rule 13.1 deals with promotions and not with selection of officers whose names are to be borne on the prescribed Lists. Reliance has been placed by the learned counsel on a judgment of their Lordships of the Supreme Court in *Sant Ram*

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Sharma v. State of Rajasthan and another (4), in which their Lordships observed as under :—

“We proceed to consider the next contention of Mr. N. C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf, the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

These observations, instead of helping the learned counsel for the respondents, help the petitioner because the instructions issued by the Inspector-General of Police run counter to and are inconsistent with the Police Rules already framed. There is no provision in the rules prescribing the Upper School Training Course but it has been the practice to give that training to Assistant Sub-Inspector of Police before their names are brought on List ‘E’ for promotion to the rank of Sub-Inspector and according to this practice, as I have pointed out above, every person whose name was borne on List ‘D’ was sent up for this training in order of seniority. It is this right to the persons on List ‘D’ which has been interfered with by the administrative instructions issued by the Inspector-General of Police. The rules do not make any provision for appointing a Selection Board or selecting Assistant Sub-Inspectors of Police for bringing their names on List ‘E’ and as such the Selection Board cannot be formed by administrative instructions. On the basis of the Supreme Court judgment cited above these instructions cannot be held to be valid.

(13) The learned counsel for the respondents has also argued that the petitioner has no right to be selected from List ‘D’ for his

(4) 1967 S.L.R. 906.

name being entered in List 'E' and for this proposition he relied upon a Division Bench judgment of this Court (D. K. Mahajan and P. C. Jain, JJ.), in *Dr. Jagjit Singh v. The State of Haryana and another* (5), in which it has been observed as under : —

“The petitioner was not entitled as of right to be promoted as Director, Health Services, Haryana. The only right of his was that he should have been considered for the post and the petitioner was admittedly considered. The Committee was acting in an advisory capacity and fully considered the ability, the academic qualifications, the fitness, the capacity to work and the service record of each candidate. The proceedings of the Committee as well as the impugned order are purely administrative. The Committee was not acting in a quasi-judicial manner and there was no legal obligation on the Committee to afford an opportunity of regular hearing to the petitioner. In this case, there has been no infringement of principles of natural justice, nor has any irrelevant matter been considered.”

These observations apply to the selection for promotion and not to the method of selection in bringing the name of the Assistant Sub-Inspectors on List 'E', whereafter they can be considered for promotion as Sub-Inspectors of Police. As the learned Judges have observed, every member of the public service has the right to be considered for promotion and if he has to acquire any qualification for being eligible for selection, in my opinion, the Government is not entitled to put obstacles in his way. This matter has been dealt with by me earlier at length. On this ground, therefore, the petition cannot be dismissed. The refusal to send the petitioner for the Upper School Training Course has practically infringed his fundamental right under Article 16 of the Constitution and he has every right to approach this Court for safeguarding his fundamental right. The petition is, therefore, maintainable by him.

(14) The learned counsel for the respondents has placed his reliance on a judgment of P. C. Pandit, J., in *Bikkar Singh v. The State of Punjab and others*, (6), which has no applicability to the facts of the present case. In that case no service rules had been

(5) C.W. 2347 of 1967 decided on 21st July, 1968.

(6) 1968 S.L.R. 808.

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framed under Article 309 of the Constitution for regulating the appointments to the posts of Superintendents in the office of the Director of Public Instruction. In the absence of such rules, it was held :—

“The head of the Department, namely, the Director of Public Instruction, is entitled to apply his own judicious mind in making selections to higher posts. The petitioner has not made any allegation of bias or *mala fides* against the said official. The Government, in order to have a uniform standard in making these selections, had issued instructions from time to time. In the instant case, the Director of Public Instruction along with Deputy Director, Schools Administration and the Establishment Officer of the Department held a meeting and considered the cases of the petitioner and other candidates. When the selection is made, it is obviously the subjective satisfaction of the Director of Public Instruction and the same is not justiciable and not subject to the judicial review of the Court under Article 226 of the Constitution, unless such selection is either *mala fide* or based on irrelevant or extraneous considerations. A comparative assessment of the various candidates based on their personal files and overall assessment of their work and conduct, has to be made by the said officer. Even if this Court was inclined to take a different view, it could not substitute its own opinion in place of that of the officer concerned. In my view, it would be difficult to run any administration if one were to hold otherwise. It is undisputed that no Government servant has a right to promotion. All that he can claim is that his case should also be considered along with the others at the time of promotion. When once this Court comes to the conclusion that his case was so considered, he has no right to come to this Court under Article 226 of the Constitution and get the selection made by the appropriate authority quashed by asking this Court to substitute its own opinion for that of the officer concerned, unless, as I have said, he could prove that the officer concerned was biased against him and he had made the selection on extraneous considerations. No such thing has been proved in the instant case.”

As I have pointed out, in that case there were no rules and, therefore, the learned Judge upheld the selection made by the Director of Public Instructions. But in the instant case there are elaborate rules framed since 1934 and the instructions under which selection has been made run counter to those rules. The observations of the learned Judge in the case cited cannot help the respondents.

(15) It has then been urged by the learned counsel for the respondents that chances of promotion are not conditions of service and reliance has been placed on a judgment of their Lordships of the Supreme Court in *The State of Mysore and another v. G. N. Purohit and others* (7). This point is of no avail because what the petitioner is claiming in the instant case is not that he must be promoted but all that he is seeking is that he should be allowed to qualify for promotion especially because the Training Course has been prescribed as a matter of practice and not under any rules and there is no other way of getting that training except by admission into the Police Training College, Phillaur, for which the old practice was to send up all persons on List 'D' so that if they successfully pass that Training Course, their names can be brought on List 'E' and it is after their names are brought on list 'E' that the officers concerned have the right to be considered for promotion as Sub-Inspector of Police. It is this right that has been interfered with by the issuance of the instructions by the Inspector-General of Police, and, in my opinion, the petitioner is justified and entitled to seek a direction from this Court to safeguard his rights under the Police Rules. It has then been urged that these instructions can be issued under section 7 and 12 of the Police Act (V of 1861). Section 7 has no application, not even remotely, and under section 12, the Inspector-General of Police has the right to frame such orders and rules, as he deems expedient, relevant to the organisation, classification and distribution of the police force, etc., subject to the approval of the State Government. It is admitted by the learned counsel for the respondents that no such approval of the State Government was given to the instructions issued by the Inspector-General of Police,—*vide* his memo No. 21146-206/B, dated 25th August, 1964, and these instructions cannot, therefore, have any force under section 12 of the Act. There is thus no merit in this submission of the learned counsel.

(16) The second point argued by the learned counsel for the petitioner is that the warnings set out above should be quashed.

(7) 1967 S.L.R. 753.

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The first warning conveyed to the petitioner on 30th November, 1964 related to his working for the period 1st April, 1964 to 30th September, 1964, and cannot be interfered with by this Court in exercise of its powers under Article 226 of the Constitution. This Court cannot substitute its own opinion for that of the appropriate authority who has to judge the working of a public servant and write the confidential report. The warning contained in Annexure 'B' to the writ petition cannot, therefore, be quashed. However, the adverse remarks conveyed to the petitioner on 22nd April, 1965, (Annexure 'C' to the writ petition) cannot be allowed to stand. These remarks were based on the facts of the criminal case in which he was being tried for an offence under sections 379/221, Indian Penal Code. He was acquitted in that case by the learned Sessions Judge and the State appeal against acquittal was dismissed by this Court. These remarks having been communicated to him during the pendency of the criminal case and while the petitioner was under suspension, cannot be allowed to stand after he has been acquitted by the learned Sessions Judge. His acquittal means that he was not found guilty of the charges levied against him and the allegations on which the charges were framed were found to be not correct. In view of his acquittal, the respondents should have deleted these remarks from his character roll. I am, therefore, of the opinion that these remarks should be quashed.

(17) The last point argued in the case is that the petitioner was superseded in the matter of confirmation as Assistant Sub-Inspector and promotion to the rank of Sub-Inspector of Police because he was under suspension as a result of the criminal case against him. During the period of his suspension his juniors were confirmed as Assistant Sub-Inspectors of Police and were promoted to the rank of Sub-Inspectors of Police and now after his acquittal of the criminal charge, the petitioner has the right to call upon the respondents to consider his claim for confirmation as Assistant Sub-Inspector of Police and for promotion to the rank of Sub-Inspector ignoring his suspension and the criminal case against him. I find good deal of force in this submission of the learned counsel for the petitioner. It is quite evident that if the petitioner had not been arrested and suspended, his claim for confirmation as Assistant Sub-Inspector of Police and promotion in due course as Sub-Inspector of Police would have been considered on the strength

of his service record and now that he has been acquitted of the criminal charge, he has the right to be considered for confirmation as Assistant Sub-Inspector of Police and promotion as Sub-Inspector of Police. The learned counsel for the petitioner has relied upon a Division Bench judgment of the Mysore High Court in *Sri A. N. Nagnoor v. State of Mysore and another* (7), in which head-note (a) is as under :—

“An order of the Government promoting a junior in supersession of a senior without considering the claim of the senior for promotion when it is due to him has to be quashed even though the promotion is a temporary one, as it is in violation of the principle of equality of opportunity embodied in the Article.

It is no doubt true that promotion of an employee depends on a multitude of considerations and that an employee cannot claim it as of right. But in normal course of things when a senior on account of his seniority expects a promotion as it is due to him, he would be promoted unless he is otherwise found unfit. Therefore, an employee has a right to ask for the consideration of his claim for promotion alongwith other persons who are similarly situate. If the promoting authority overlooks his claim or does not apply its mind as to whether he is fit or not for promotion, but supersedes his claim by promoting his junior, then such employee is entitled to complain to the Court that the authority has violated the principle of equality of opportunity embodied in Article 16 and to request that such order should be quashed and that the promoting authority be directed to consider his claim for promotion.”

Another judgment of a Division Bench of the Mysore High Court relied upon by the learned counsel for the petitioner is *M. G. Sirsikar v. The State of Mysore and others* (8), in which it has been held :—

“So if the disciplinary proceeding was the only ground on which the petitioner's claim was overlooked, and if it turned out, as it has turned out in the case before us, that the disciplinary proceedings had no legs to stand

(7) A.I.R. 1964 Mysore 229.

(8) 1967 S.L.R. 723.

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upon and that the charges with which it was concerned were groundless, it should follow indisputably that the refusal of promotion was based on an irrelevant and non-existent ground, and so, on his exoneration, the petitioner became entitled to be promoted with effect from the date on which respondent 3 was promoted. This is so, since, if the disciplinary proceeding had not been commenced, the person who would have been first promoted was the petitioner and not respondent 3."

Reliance has then been placed on the judgment of their Lordships of the Supreme Court in *The State of Mysore and another v. Syed Mahmood and others* (9), in which it was observed by their Lordships as under :—

"The promotions were irregularly made and they were, therefore, entitled to ask the State Government to reconsider their case. In the circumstances, the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant dates when officers junior to them were promoted."

In reply to this argument the learned counsel for the respondents only urged that the petitioner has no right of promotion to a higher post relying upon the judgments cited above.

(18) For the reasons given above, this petition is allowed and the respondents are directed to send up the petitioner for Upper School Training Course in the Police Training College, Phillaur, the adverse remarks communicated to the petitioner on 22nd April, 1965 (Annexure 'C' to the writ petition) are quashed and the respondents are directed to perform their duty and to consider whether, having regard to the seniority and fitness of the petitioner, he should have been confirmed as Assistant Sub-Inspector of Police and promoted as Sub-Inspector of Police on the relevant dates when the officers junior to him were confirmed and promoted. The petitioner will be entitled to his costs. Counsel's fee Rs. 100.

R. N. M.

(9) A.I.R. 1968 S.C. 1113.