

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

The impugned rules were amended in accordance with the provisions of section 84-A of the Act from time to time and that one such amendment was effected on 4th April, 1970. In view of the statutory amendment of 4th April, 1970, the entire body of the impugned rule became statutory in view of the ratio of *Bachan Singh's case* (supra).

(4) We also find merit in yet another contention of the learned counsel for the appellant that the respondent having accepted the appointment under the impugned rules could not deny the applicability of those rules when it came to taking of action against him, for we are of the view that the appointment was effected by the Markfed to a post which was a a common cadre post under the impugned rules. If the impugned rules are bad, then the appointment of the respondent becomes invalid and void from the very inception. The respondent cannot have the cake and eat it too. For this reason also, the respondent would not have any *locus standi* to challenge the validity of the impugned rules.

(5) For the reasons aforementioned, we allow the appeal and set aside the order of the learned Single Judge, but with no order as to costs, as the respondent is not represented, though he had been personally served and in accordance with the rules an actual date notice by registered post has also been sent to him.

H. S. B.

Before D. S. Tewatia and G. C. Mital, JJ.

JAWAHAR LAL ARORA,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 2842 of 1982

October 29, 1985

Constitution of India 1950—Article 16—Adverse remarks recorded against Government official—Representation filed by said official seeking expunction of adverse remarks—No statutory rules

or regulations regarding consideration of such representation—Officer superseded on account of the pendency of the adverse remarks—Representation subsequently allowed and adverse remarks expunged—Junior Officers in the meantime promoted—Such officers—Whether entitled to a hearing before the pending representation decided—Rule of audi-alteram-partem—Whether attracted to such a case—Expunction of the adverse remarks—Whether entitles the concerned officer to be considered for promotion from a date when he was initially superseded.

Held, that in the absence of any statutory rules or regulations, an officer aggrieved against an adverse confidential report, is entitled to file representation on the basis of the principles of natural justice and if remedy is provided by the rules or regulations, then to follow the same. The State Government was competent to decide the representation one way or the other, and for such a decision, on the representation the officer whether likely to be effected by the acceptance of the representation are not entitled to be heard. This is neither permitted by any rule or instructions nor would be feasible on the principles of natural justice. While the person against whom adverse report is recorded is permitted to file representation against such report but in case the junior person is allowed to file a representation against the annual confidential report of the senior person, then the junior officer would file representation even against good reports of the senior officer for bringing it down. As such, it has to be held that no junior officer would be entitled to a hearing before the representation filed by the official against the adverse remarks is decided and the rule of audi-alteram-partem is not attracted to such a case.

(Para 8).

Held, that in view of the acceptance of the representation and on the expunction of the adverse remarks and improvement of the gradation, the officer's case for further promotion has to be re-considered in the light of the orders passed on the representation from a date when such officer was initially superseded.

(Para 11)

Case referred by Hon'ble Mr. Justice M. M. Punchhi, on dated 7th August, 1984 to larger Bench for the decision of an important question of law involved in this case....The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Gokal Chand Mital, finally decided the case on October 29, 1985.

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *complete record of the case may kindly be summoned from the respondents and after perusal of the record, a writ*

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

of certiorari or mandamus may be issued quashing the order, Annexure P-9 and appropriate writ, order or direction may be issued to the respondents to re-consider the petitioner for inclusion in the I.A.S. Select List for the year 1973 and for successive years in accordance with the regulations which were applicable at the relevant time and petitioner's appointment and absorption in the I.A.S. be regulated with effect from the date officers junior to him were appointed;

- (ii) filing of the certified copies of the annexures may be dispensed with;
- (iii) service of notice of motion at this stage may be dispensed with; and further promotion may be stayed till the final decision of writ petition.
- (iv) costs of the petition may be allowed in favour of the petitioner and against the respondents.

Civil Misc. No. 1757 of 1984:

Application under Section 151 of the Code of Civil Procedure praying that the petitioner be permitted to file replication to the written statement filed by Shri J. P. Narang (added respondent) to the present writ petition.

K. P. Bhandari, Senior Advocate and Sunil Gour, Advocate (V. K. Bali, Advocate with him), for the Petitioner.

Kuldip Singh, Senior Advocate (G. C. Gupta, Advocate with him), for Respondent No. 12. ...

H. S. Brar, Advocate for Respondent Nos. 1 and 2.

B. L. Bishnoi, Additional A.G. (Hy). with Nirmal Yadav A.A.G. (Hy), for No. 3.

D. S. Bali, Advocate for No. 9.

Naubat Singh, Advocate for No. 13.

V. K. Vashishat, Advocate for Nos. 14 and 19.

JUDGMENT

Gokal Chand Mital, J. :

(1) Two main points arise for determination in this writ petition. One, while considering the representation filed against

adverse annual confidential report, junior officers, who may have been promoted in the meantime, would be entitled to a hearing under the rule of *audi-alteram-partem*, and two after the representation is allowed by the State Government and the adverse entry is expunged and the grading is improved, whether the said officer's case for further promotion has to be re-considered in the light of the orders passed on the representation.

(2) J. L. Arora petitioner was selected to the State Civil Service in the year 1950. In the year 1972-73 in the annual confidential report, remarks were recorded that his integrity was doubtful. Otherwise his work was rated as 'good'. On receipt of the adverse remarks he represented. According to the rules/instructions, the representation had to be decided within a period of three months but it took 4 years. Ultimately,—*vide* order Annexure P-2, conveyed in December, 1977, the officer was informed that in the confidential report of the year 1972-73, the adverse remarks were expunged. Thereafter, by letter, dated 2nd February, 1978 (Annexure P-1), he was informed that in view of the letter, Annexure P.2, the assessment of the confidential report for the year 1972-73 has been improved. The improved remarks were 'very good'.

(3) While the representation was pending, junior officers in the State Civil Service were promoted, to the selection grade but a vacancy was kept unfilled till the representation filed by the petitioner was decided. After the remarks were expunged and he was upgraded, the State Government reconsidered the matter and,—*vide* Annexure P7/A promoted him to the selection grade cadre from the date his junior were given the selection grade, i.e., 21st January, 1972, with the result that his seniority was restored.

(4) Right from 1973 till before the representation of the petitioner was accepted by the State Government he was not brought on the select list of I.A.S. in view of the adverse confidential report for the year 1972-83 because he was not granted integrity certificate. After his representation was accepted and his seniority in the State list was restored, when the case for preparing the select list for IAS came up for consideration in 1978, he was selected. He was again selected in the select list prepared for the year 1979, and ultimately was absorbed in the IAS cadre on 26th December, 1980. After he was absorbed in the IAS, cadre, he filed representation,

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

Annexure P3, dated 27th February, 1981 to the Government of India for considering his case for inclusion in the IAS cadre select list for the years, 1973 to 1977 and for absorbing him in IAS cadre on that basis in view of the expunction of adverse remarks and improvement in the gradation. He kept on submitting further representation which are Annexures P4 to P6 and Annexure P8 and P9. Finally, he was conveyed by letter, Annexure P10, dated 24th February, 1982 that his request could not be accepted. Feeling aggrieved, the present writ petition was filed.

(5) Initially only the Union of India, Union Public Service Commission and the State of Haryana were impleaded as respondents but later on after seeking permission of this Court the officers against whom relief was sought or would have been affected on the acceptance of the writ petition, were also impleaded. The writ petition came up for hearing and disposal before M. M. Punchhi, J. During the course of hearing, claim against officers, who were brought on the select list of 1973 and 1974 and were absorbed in the IAS cadre was given up, the claim was confined to re-consideration of the matters for the years 1975-76 and 1977. On behalf of the private respondents an argument was raised that the order expunging the remarks passed in favour of the petitioner was passed in violation of the rule of *audi alteram partem* inasmuch as it had civil consequences affecting them because they had not only been absorbed in the IAS cadre but had further been taken in the senior scale. In support of the argument reliance was placed on the decision of I. S. Tiwana, J. in *Lakhi Ram Punia vs. State of Haryana and others*, (1). It was brought to the notice of M. M. Punchhi, J. that Letters Patent Appeals had been filed against the decision of I. S. Tiwana, J. and since he had certain reservations regarding the fact as whether the case of *Smt. Maneka Gandhi vs. Union of India*, (2), was applicable to the facts of the case because I. S. Tiwana, J., had mainly relied on that decision, he was of the opinion that the case should be heard by a larger bench and if possible along with those LPAs. This writ petition was put up along with LPAs and the arguments were heard together.

(1) CWP No. 1057 of 1979, decided on 9th December, 1982.

(2) A.I.R. 1978, S.C. 587.

(6) Judgment in *R. L. Kalson vs. Laksi Ram Punia and others*, (3). The point, which was decided by I. S. Tiwana, J. was not gone into because counsel for the parties wanted to decide the case on merits after going through the service record and annual confidential reports, and that is what we did. The decision rendered in that case has no relevance for the purposes of decision of this case as the facts are entirely different. However, wherever it would be necessary to refer to the facts of that case to show that the facts were different, brief reference would be made while discussing the points involved in this case.

(7) Before we proceed to decide the case on merits, as emerged on the record of this case, the point which was raised before M. M. Punchhi, J. on behalf of the private respondents will have to be decided. In case it is held that before the representation of the petitioner against adverse confidential remarks is considered and decided the private respondents were entitled to a hearing then it will not be necessary to decide the merits of the case which would be gone into by the authority who would hear the representation, but in case it is held that the private respondents were not entitled to a hearing before the representation was considered and decided, in that eventuality the merits will have to be gone into by us.

(8) The counsel for the private respondents has placed strong reliance on the decision of I. S. Tiwana, J., in *Laksi Ram Punia v. State of Haryana* (4), for the proposition that before representation of the petitioner was considered the private respondents who were junior to the petitioner but had in the meantime been promoted to the selection grade should have been heard. The acceptance of his representation would prejudice their chances of promotion because if the adverse remarks continued to remain then their chances of promotion would be improved. The point raised has necessitated taking notice of the facts of *Laksi Ram Punia's case* (for short 'Punia's case') in brief. In the State Police Service Kalson was senior to Punia. Two adverse confidential reports recorded in the service record of Kalson. Against the said reports, Kalson filed representation, which was rejected. After 4/5 years of the rejection, of the representation and after there was change in the

(3) L.P.A. 119 of 1983 decided on 11th September, 1985.

(4) CWP 1057 of 1979, decided on 9th December, 1982.

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

Government, Kalson filed another representation. In the meantime Punia who had good service record was promoted to the next highest post in State Police Service (S. P. non-IPS) and that very year was placed on the select list of I.P.S. It is thereafter that Kalson's representation was accepted and the adverse reports were expunged. Punia filed writ petition in this Court to impugn the action of the Government in expunging the adverse remarks given to Kalson. The writ petition was dismissed *in limine* with the observation that he had no *locus standi* to impugn the action of the Government expunging the adverse remarks. Punia went up in appeal to the Supreme Court and his appeal was allowed and it was held that he had *locus standi* and the relevant observations of Bhagwati, J., are as follows :—

“But this view is, in our opinion erroneous because the effect of expungement of adverse remarks in the confidential report of respondent No. 6 has to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of respondent No. 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent No. 6. The appellant was therefore clearly entitled to show that the Government acted beyond the scope of its powers in expunging the adverse remarks in the confidential report of respondents No. 6 and that the expungement of the adverse remarks should be cancelled. The appellant had, in the circumstances, *locus standi* to maintain the petition.....”

This judgment is reported as *Lakhi Ram Punia vs. State of Haryana*. (5). It is, thereafter, that the matter was taken up by I. S. Tiwana, J. Keeping in view the aforesaid observations and after making the reference to *Smt. Maneka Gandhi's case* (supra), it was concluded that Punia was entitled to a hearing before adverse remarks were expunged and since this was not done, there was violation of the rules of *audi alteram partem*. As a consequence, the writ was allowed, the order of the State Government expunging the remarks was quashed giving liberty to the State Govern-

ment to re-consider the matter after affording hearing to the parties. In L.P.A. filed against the aforesaid order, the point decided by I. S. Tiwana, J, was not gone into for the reasons that the counsel for the parties wanted us to decide the case on merits. While disposing of the LPA it was held as a matter of law that once a representation against adverse annual confidential report is decided and if there is no other remedy under the Statutory rules or regulations, then the matter cannot be reconsidered again. The order passed on the reconsideration of the matter was quashed by us. In this case on the first representation of the petitioner, the State Government expunged the adverse remarks and rated him 'very good' instead of 'good'. This happened in December, 1977,—*vide* Annexure P. 2 and in February, 1978,—*vide* Annexure P. 1. None of the respondents complained against the aforesaid orders as neither they filed any representation before the State Government nor impugned them by filing a writ and remained content till the petitioner filed the writ petition in 1982 and for the first time raised the point in the written statement. At such a belated stage they cannot be allowed to agitate the matter. Moreover, as held in *Kalson's case* in the absence of any statutory rules or regulations, an officer aggrieved against the adverse confidential remarks is entitled to file a representation on the basis of principles of natural justice, and if remedy is provided by the rules or regulations then to follow the same. In this case the petitioner filed representation on the basis of departmental instructions immediately on receipt of the adverse report, which was decided by the State Government after long delay. The State Government was competent to decide the representation one way or the other and in this case the representation was favourably decided. We are of the considered view that for decision of such a representation the private respondents were not entitled to be heard. This is neither permitted by any rule or instructions nor would be feasible on the principles of natural justice. Annual confidential report of every officer or official, whether serving in the State Government, Central Government or any undertaking of the Government, would be recorded every year. While the person against whom adverse confidential report is recorded is permitted to file representation against it, but in case the junior person is allowed to file representation against the annual confidential report of the senior person then the junior officer would file representation even against 'good' or 'very good' or 'outstanding' report of the senior officer for bringing it down. If this is allowed to be done, during whole year, it

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

may not be feasible for the concerned authority to decide the representations which are bound to be in large number. Therefore, we would like to confine this matter on the principles of natural justice to permit only the aggrieved officer against whom the confidential report is recorded to file the representation and no junior person would be entitled to a hearing before the same is considered and decided. As already noticed, only one representation would be permissible and not second one. Hence, we hold that the facts of the present case are clearly distinguishable from the facts of Kalson's case.

(9) The Supreme Court on the peculiar facts of *Lakhi Ram Punia's case* (supra), had only observed that the expungement of adverse remarks in the confidential report of an officer may prejudice the chances of promotion of the junior officers if he is able to show that the expungement of the remarks was illegal or invalid because if the adverse remarks would have remained in the confidential report he would have improved his chances of promotion. On this basis it was observed that the junior officer would have *locus standi* to maintain the petition under Article 226 of the Constitution of India. The Supreme Court could have held that the junior Officer was entitled to be heard before the remarks were expunged. But it was not so held. He was only given *locus standi* to file the writ petition. As already noticed that when original representation of Kalson was considered Punia was not given hearing and the representation of Kalson was rejected. It is long thereafter that another representation was filed, which was accepted and the adverse remarks were expunged. Under these circumstances, the junior officer, who had in the meantime been promoted, was held to have *locus standi* to maintain the petition. Even if the aforesaid case was to be applied to the facts of the present case, we are of the view that the private respondents cannot take any assistance therefrom. Firstly, while promoting junior officers to the selection grade a vacancy was kept unfilled for the petitioner till the representation filed by him was decided. This was done precisely with a view that in case his representation was accepted, this place in seniority would be restored by promoting him from the date when his junior officers were promoted. Secondly none of private respondents challenged the order passed in December, 1977 (Annexure P. 2) by which adverse remarks were expunged nor challenged the order of the State Government of February

1978 (Annexure P 1) by which the gradation was improved from 'good' to 'very good', and remained content even till the filing of the writ petition by the petitioner in the year 1982. For the first time challenge was made in the written statement. As already noticed, they cannot be allowed to do so at such a belated state and thirdly because no argument was raised before us on behalf of the private respondents that the State Government had no power to entertain the representation or that there was no justification in accepting the representation and in expunging the remarks and improving the gradation. Therefore, viewing the case from any angle the decision in *Lakhi Ram Punia's case* (supra) in no way helps the private respondents. Accordingly, the argument which was raised before M. M. Punchhi, J, and has been repeated before us on behalf of the private respondents has no merit and is hereby rejected.

(10) Adverting to the merits of the case, the case of the petitioner is that the order expunging the adverse remarks was conveyed to him by letter Annexure P 2 in December, 1977 and the order improving his assessment of the confidential report from 'good' to 'very good' was conveyed to him,—*vide* letter dated 2nd February, 1978 (Annexure P 1) and by order Annexure P 7/A he has been promoted to the selection grade from the date his juniors were promoted and, therefore, his case for being brought on the select list and for being absorbed in the IAS cadre from 1973 till 1977 had to be re-considered. He has already given up his claim against officers who were brought on the select list of 1973/1974 and, therefore, the matter is to be confined for the years 1975, 1976 and 1977. Of course, for 1975-76 his case could not be considered as by then his representation had not been decided. For the year 1977 also, petitioner's case was that he was not considered in the light of the expunged remarks and improved confidential report. However, the stand of the State Government as contained in para 1 of the written statement was that in spite of the decision dated 19th December, 1977 expunging the adverse remarks, requisite certificate was issued in favour of the petitioner but the selection committee which met thereafter on 30th December, 1977 after considering his overall record still did not find him suitable for inclusion on the select list. The aforesaid statement of fact recorded in the written statement was challenged on behalf of the petitioner and, therefore, we sent for the original file. The original file was produced before us and a look at the same shows that it was no where taken

Jawahar Lal Arora v. Union of India and others
(G. C. Mital, J.)

notice of that his adverse remarks were expunged. No reason has been given as to why he is not brought on the select list for the year 1977. Moreover, the gradation was improved from 'good' to 'very good' which decision was taken in January/February, 1978, and it is thereafter that the case of the petitioner for the year 1977 could be considered. In view of the facts as found from the Government file, the counsel for the State and Government of India were unable to raise any argument to support the stand taken in the written statement. Thereafter, it is clear that even while preparing the select list for the year 1977, the case of the petitioner was not considered in the light of the order expunging the adverse remarks and improving the annual confidential reports.

(11) It has now to be seen whether on acceptance of the representation against annual confidential report and on improvement of the gradation for the year 1972-73, the petitioner is entitled for reconsideration for being brought on the select list of IAS for the years 1975-76 and 1977 (petitioner having given up his claim for 1973, 1974). This matter is covered in favour of the petitioner by the decision of the Supreme Court in *Gurdial Singh Fijji v. State of Punjab and others*, (6). The decision of the Supreme Court in *Gunendra Prasad Sen Gupta vs. Union of India and others*, (7) also fully supports the petitioner's case. Relying on the aforesaid decisions it is held that in view of the acceptance of the representation and on expungement of the remarks and improvement of the gradation for the years 1972-1973, the petitioner is entitled to be considered for the years 1975-1976 and 1977 for being brought on the select list of IAS. The State Government itself gave the benefit to him in regard to the promotion to the selection grade from the date his juniors were given the same i.e. with effect from 21st January, 1972,—vide Annexure P 7/A and yet his case was not being considered for bringing him on the select list of IAS, for the years 1975 to 1977. The reason which was given for not bringing him on the select list for the year 1977 has been found to be erroneous on facts as already held. Therefore, it is a fit case in which necessary directions deserve to be issued for considering the case of the petitioner for including his name in the select list

(6) A.I.R. 1979 S. C. 1622.

(7) 1983 (2) S.L.R. 189.

of IAS for the years 1975 to 1977 in view of the service record as corrected or amended by orders Annexures P 1 and P 2.

(12) For the reasons recorded above, this writ petition is allowed, the order Annexure P 9 is hereby quashed and direction is issued to the official respondents to re-consider the case of the petitioner for inclusion in IAS select list for the years 1975 to 1977 in accordance with the regulations which were applicable at the relevant time keeping in view the annual confidential report for the year 1972-73 as corrected or amended and conveyed through Annexures P 1 and P 2 along with other relevant service record and the petitioner's appointment and absorption in the IAS cadre be regulated on the basis of such re-consideration. If the Selection Committee decides that he is not suitable for inclusion in the select list and should therefore be superseded, it shall record its reasons for the proposed supersession. If on the other hand, the Committee decides to include his name in the select list, he will be entitled to rank in that list in accordance with his seniority unless, in the opinion of the Committee, there is a junior officer of exceptional merit and suitability who may be assigned a higher Place. The Union Public Service Commission will thereafter be consulted in accordance with the regulations. The committee should decide the matter within 6 months from today. The petitioner would be entitled to costs from the official respondents.

D. S. Tewatia, J—I agree.

N.K.S.

Before J. V. Gupta, J.

PURAN SINGH,—Appellant.

versus

JAGTAR SINGH,—Respondent.

R.S.A. No. 296 of 1985.

September 6, 1985.

*Code of Civil Procedure (V of 1908)—Order 41 Rules 1 and 3—
Rules and Orders of Punjab High Court Volume IV—Chapter 17
Rule 12(2)—Memorandum of appeal presented alongwith certified*