vary the earlier order of the criminal Court under section 125 of the New Code, accordingly. The answer to the question posed at the outset is rendered in the affirmative.

(13) Applying the same, it would be plain that the petitioner-husband is entitled to succeed. The learned Additional Chief Judicial Magistrate, Sangrur, in the order under revision, seems to have taken the view that even though the decree was that of a Court of competent jurisdiction and it covered the matter completely, yet he still had the discretion to follow the same or not. He seems to have chosen to go beyond the concurrent judgments of the civil Courts on the point and, in fact, launched on conjectures as to what would have been the result if certain evidence was brought to their notice. In essence, he seems to have again sat on judgment over and above the judgments rendered by the civil Courts themselves. That, in my view, he was not entitled to do. The order under revision has, therefore, to be set aside and in accordance with the judgments and decrees of the civil Courts, the earlier grant of maintenance under section 125 of the New Code, has to be necessarily cancelled. The revision petition is allowed.

S. P. Goyal, J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

PURAN SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Civil Writ Petition No. 3102 of 1978

December 8, 1980.

Constitution of India 1950—*Article* 311—*Adverse confidential report against a public servant—Departmental enquiry ordered subsequently on the same material that led to the adverse report—Holding of such an enquiry—Whether permissible—Adverse report—Whether gets wiped out by such enquiry—Nature and purpose of a*

confidential report as distinguished from a departmental enquiry—Stated.

Held, that the superior authorities are obliged both by the government instructions as also by sound administrative policy to record their assessment on a subordinate's work. Once adverse circumstances or misconduct come to be noticed, then the same cannot but be reflected in the annual confidential report. It is thereafter for the said officer or his superiors to consider what punitive action against the public servant would follow with regard to such misconduct or adverse assessment. Both statutory rules generally in the service law as also the principles of natural justice would now virtually bar any action by way of major punishment against a delinquent official except after holding a departmental enquiry and affording him reasonable opportunity to show cause therein. It would, therefore, be manifest that for the purposes of any departmental action, the superior authorities will have to make up their mind on the nature of the punishment to be imposed for the misconduct and the relevant procedural steps of the departmental enquiry to be conducted therefor. To say, that no enquiry can be ordered merely because in compliance with instructions or otherwise, the superior authority has recorded its adverse subjective assessment in the shape of an annual confidential report, appears to be the proverbial putting of the cart before the horse. Indeed, the normal course of events would be that the misconduct of the inferior officer would first be noticed by the superior authority and a subjective assessment made thereof and later for the purposes of imposing punishment, an enquiry would necessarily have to be ordered. The assumption that in such a context, the subsequent departmental enquiry would be an empty formality or prejudicial to the public servant is not well conceived and rather unwarranted. (Paras 8 and 9)

Bhajan Singh vs. *Bahal Singh and another,* 1967 S.L.R. 601.

Kartar Singh vs. *State of Haryana,* 1973, Current Law Journal 56. OVERRULED.

Held, that there cannot be an automatic effacing or a quashing of the earlier adverse confidential report, the moment a departmental enquiry is ordered thereafter. It deserves highlighting that an adverse entry in the annual confidential report is neither immutable nor something sacrosanct for ever. Both the recording of an adverse entry and even the rejection of a representation against it, is not something which can be equated with the rendering of a final judicial judgment and the consequences of the findings thereon being binding on the principle of *res judicata.* In the matter of assessment of the conduct of a public servant, the issue can and indeed

does remain open obviously till the conclusion of a departmental enquiry. Therefore, the holding of an enquiry subsequent to the adverse confidential report may in actual practice be something beneficial to the delinquent official. If he is able to establish his innocence in these departmental proceedings on the identical material, it would obviously be open to him to represent to the higher authority to modify or expunge the earlier adverse entries in the confidential record on the ground that he is duly exonerated therefor. On the other hand, if the enquiry establishes misconduct then inevitably the earlier adverse annual confidential report receives further confirmation as a result thereof. The holding of a subsequent departmental enquiry would, therefore, neither be necessarily prejudicial to the public servant nor would it automatically efface the subjective assessment or entitle him to seek a quashing thereof.

(Para 11)

Held, that the very nature and purpose of an annual confidential report as against the formal departmental enquiry are different. Whilst the former is specifically for the internal assessment or estimate of the performance of a public servant by his superiors over the period of one year, the latter is intrinsically intended as the foundation for taking a punitive action against him if the charges come to be proved. The very nature and purpose of the two are consequently distinct and separate and to confuse them as either identical or similar, would be patently erroneous. An annual confidential report is in essence subjective and administrative whilst a departmental enquiry is inevitably objective and quasi judicial.

(Para 6)

Petition under Articles 226 *of the Constitution of India praying that a writ of* Certiorari, Mandamus *or any other suitable Writ, Direction or Order be issued, directing the respondent*:—

(*i*) to *produce the complete records of the case;*

(*ii*) *the orders at Annexures 'P-1' and 'P-3' be quashed*

(*iii*) *a Writ of* mandamus *be issued directing the respondent to finalise the enquiry proceedings immediately;*

(*iv*) *a Writ of* mandamus *be issued directing the respondent to give the petitioner a 'No objection certificate' on his application of pass port;*

(*v*) *a writ of* Mandamus *be issued directing the respondent to consider the petitioner's claim for promotion by ignoring the adverse remarks and the enquiry proceedings with effect from the date a person junior to him was promoted;*

(vi) *this Hon'ble Court may also pass any other Order, which it may deem just and fit in the peculiar circumstances of the case and grant all such other benefits to which the petitioner may be found entitled to;*

(vii) *the costs of this petition may also be awarded to the petitioner.*

J. L. Gupta, Advocate with G. C. Gupta, *for the Petitioner.*
Mohinder Jit Singh, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether a departmental enquiry can be ordered subsequent to the recording of an adverse annual confidential report on the identical or substantially the same material is the meaningful question which has necessitated this reference to the Division Bench.

2. The facts are neither in serious dispute nor in a wide compass. The petitioner was posted as Sub-Divisional Officer at Kurali, in the year 1969-70. He got executed certain maintenance and construction works thereat. Apparently for his work and conduct for the year, an adverse annual confidential report was recorded and wide annexure P/1, dated July 24, 1970, the same was communicated to him with a warning to improve his conduct in future. The petitioner submitted a detailed representation against these adverse remarks,—*vide* annexure P/2, dated November 6, 1970 and acting thereon the Government elicited the comments of the authorities below and on receipt of the same the petitioner's representation was rejected.

3. In the meantime enquiry proceedings were sought to be initiated against the petitioner and he was served with the adverse allegations against him in the form of a charge-sheet. The case of the petitioner is that he received the said charge-sheet (annexure P/3) on January 19, 1972, which expressly mentioned that he had been given an opportunity to explain his conduct by the Executive Engineer, Patiala, by a communication, dated May 13, 1970 to which no satisfactory reply had been submitted by him. The petitioner filed a reply denying the charges levelled against him, but this also not having been found satisfactory, the Government ordered a

regular enquiry and appointed Shri Raghbir Singh Ahluwalia as the Enquiry Officer to go into the charges against the petitioner. It is the petitioner's case that the enquiry proceedings culminated sometimes in August, 1973 and even a report was submitted by the Enquiry Officer to the Government thereafter but the result thereof was not conveyed to the petitioner for well-nigh five years whereupon he preferred the present writ petition in July, 1978.

4. This writ petition first came up before my learned brother S. P. Goyal, J. sitting singly and reliance was placed before him on two Single Bench decisions in *Bhajan Singh* v. *Shri Bahal Singh and another,* (1) and *Kartar Singh* v. *The State of Haryana etc.,* (2). Expressing a doubt about the correctness of the views expressed therein, the matter was referred to the Division Bench and that is how it is before us now.

5. The twin argument raised by Mr. Gupta on behalf of the petitioner runs thus. He first contends that once the superior officer authorised to do so has recorded an adverse entry in the annual confidential report of the public servant on the basis of the material before him, then the subsequent holding of a departmental enquiry on similar grounds becomes a mere empty formality and should therefore be quashed. Reliance for this contention, as noticed earlier, is placed on *Bhajan Singh* and *Kartar Singh's* case (supra). In the alternative it was sought to be argued rather hypothetically that in a case where an enquiry has been so ordered subsequently, then the earlier adverse entry in the annual confidential report should be deemed to be automatically effaced from the record in order to avoid any hint of prejudice. Action thereafter should follow only on the basis of the findings arrived at in the departmental enquiry and finally accepted by the appointing authority.

6 It appears to me that the aforesaid twin contentions stem from a basic fallacy and misapprehension of the very nature and purpose of an annual confidential report as against the formal

(1) 1967 S.C.R. 601.

(2) 1973 Curr. L. Journal 56.

departmental enquiry, whilst the former is specifically for the internal assessment of estimate of the performance of a public servant by his superiors over the period of one year, the latter is intrinsically intended as the foundation for taking a punitive action against him if the charges come to be proved. The very nature and purpose of the two are consequently distinct and separate and to confuse them as either identical or similar, would to my mind be patently erroneous. An annual confidential report is in essence subjective and administrative whilst a departmental enquiry is inevitably objective and *quasi*-judicial.

7. Both the object as also the imperative necessity of recording the annual confidential reports of the public servant, in a government organization has been so well delineated by the Division Bench in *Vithalrao Ramchandra Ghorpade* v. *State of Maharashtra* (3), that one cannot do better than to repeat the observation of Justice Deshpande, as under :—

> "Mr. Singhvi then contends that the maintenance of the confidential record itself is not warranted by any provision of law and as such reliance thereon by the Review Committee or the appropriate authority for such a drastic action militates against the rule of law. It is true that such remarks are made by the superiors ordinarily without any knowledge of such Government servant. Such remarks are not conveyed to him unless the same are considered to be adverse and its communication is considered necessary for his improvement. The Government servant has no opportunity to demonstrate that the remarks are wrong or false or made dishonestly. It is, therefore, urged that tenure of no Government servant can be safe and secure, if such decision is founded on such one sided subjective remarks, correctness of which was never put to test. This submission is attractive as some element of unfairness is involved on the face of it. It is, however, not possible to ignore that the relation between the State and the public servant essentially is

(3) 1973 (1) S.L.R. 255.

that of a master and servant. "Any master in the ordinary course of the employment has to make some estimate of his servants calibre and he is guided by this estimate while exploiting servant's talents for his own end. Such estimate is inevitably subjective and is bound to operate effectively in his dealing with his servants, excepting in fields where the servant is statutorily protected against its adverse effects. Where a master is an individual or a small group of individuals, even a mental note of calibre, capacity, aptitude, abilities, talents, habits and the character, etc., of the servant can meet such requirement. Where, however, the master happens to be a vast institution like the Government and a servant has to work under a floating army of several superiors, such estimate, so essential for the functioning of the administrative machinery and putting the talents of the servant to maximum possible use, cannot be made available unless written record is maintained by the superiors under whom he has occasion to work. Maintenance of such records ordinarily is regulated by administrative rules or instructions. Such record is maintained regularly and in the ordinary course of duties by the superiors in the prescribed form. Copies are required to be sent to the Head of the Department who is also required to verify such remarks and require the author of the remarks to reconsider the same if the Head of the Department thinks it so necessary. This itself tends to ensure that truthfulness of the remarks. It is true that such estimate is subjective and one sided and is open to the infirmities implicit in such procedure. It is also true that possibility of some dishonest superior abusing his position and damaging the record of such servant maliciously cannot be totally ruled out. But further guarantee of the genuineness is afforded by the record being maintained by successive superiors from time to time. It is inconceivable that all the successive superiors of the same servant would commit errors or continue to bear malice against him and make unfavourable remarks without any rhyme and reason. Thus the overall picture of such record maintained during the long period of service by

several superiors is more likely than not to reflect the real personality of such servant. It is true that such records are kept secret and the servant cannot have any access to it, excepting when adverse remarks are communicated. But this is essential for two reasons. This enables the superiors to express freely and fearlessly. Secondly, this secrecy avoids embarrassment to the servant himself while dealing with his colleagues or juniors. This record is primarily and predominently intended for keeping the Government informed of the required material about the servant, for deciding how best to exploit his talents for the administration of the State, though incidentally it may effect the servant adversely. It is this record which enables the Government, like any other master, to make up its mind while allotting work, places and promotions and in various other administrative fields. It is difficult to conceive of any administration functioning without such record. Maintenance of such record is not contrary to any provision of law. On the other hand, it is required to be maintained out of sheer need in public interest. It is also an ordinary incident of the relationship of master and servant. Whatever unfairness is involved in allowing the remarks to be made behind the back of such servant, is outweighed by the mode in which it is maintained and the public interest as a whole, which can ill afford to dispense with such record. This is the only way to strike a balance between the rights of the citizens and the public interest."

It must, therefore, be held that the recording of the confidential report is in the sheer public interest and in a large governmental organisation, the same would be imperative, and equally its confidential nature must also be maintained to a certain extent. Once that is so either on the basis of larger public policy or usually in compliance with the government instructions on the point, the superior officers are enjoined and indeed duty bound to put down their subjective assessment of a public servant's conduct in the shape of a confidential report. Therefore, it may well be said that such authority has both a right and a duty to record the annual confidential report unless for some specific and weighty reasons he

chooses to defer the same. Neither principle nor precedent could be cited on behalf of the petitioner which could possibly bar the superior authority from doing so.

8. It appears to me that the argument that a departmental enquiry cannot follow on the same materials which had earlier led to the recording of an adverse confidential report is both fallacious and rather lop-sided. As already noticed the superior authorities are obliged both by the government instructions as also by sound administrative policy to record their assessment on a subordinate's work. Once adverse circumstances or misconduct come to be noticed, then the same cannot but be reflected in the annual confidential report. It is thereafter for the said officer or his superiors to consider what punitive action against the public servant would follow with regard to such misconduct or adverse assessment. Both statutory rules generally in the service law as also the principles of natural justice would now virtually bar any action by way of major punishment against a delinquent official except after holding a departmental enquiry and affording him reasonable opportunity to show cause therein. It would, therefore, be manifest that for the purposes of any departmental action, the superior authorities will have to make up their mind on the nature of the punishment to be imposed for the mis-conduct and the relevant procedural steps of the departmental enquiry to be conducted therefor. To say that, no enquiry can be ordered merely because in compliance with instructions or otherwise, the superior authority has recorded its adverse subjective assessment in the shape of an annual confidential report, appears to me as the proverbial putting of the cart before the horse. Indeed the normal causes of events would be that the misconduct of the inferior officer would first be noticed by the superior authority and a subjective assessment made thereof and later for the purposes of imposing punishment, an enquiry would necessarily have to be ordered. To hold that a departmental enquiry cannot follow an adverse annual confidential report, would in practical terms mean that the delinquent employee would stand virtually absolved of any major punishment, the moment an adverse entry has been made in his record. That would be neither logical nor sound public policy.

9. The assumption that in such a context, the subsequent departmental enquiry would be an empty formality or necessarily prejudicial to the public servant appears to me as not well conceived and rather unwarranted. It may first be noticed that the officer recording the adverse confidential report, may in the first instance, not be one empowered to order a departmental enquiry or to hold one. As for instance in the present case, the annual confi-confidential report, admittedly was first initiated by the Executive Engineer and then endorsed by his superior—a Superintending Engineer, whilst the enquiry has been ordered by the Government itself. Therefore, the presumption that because of the recording of the annual confidential report by the Executive Engineer, the Government as such would be prejudiced in ordering the enquiry or as in the present case, the Enquiry Officer (Mr. Raghbir Singh Ahluwalia) would be necessarily biased against the public servant, is one which is wholly unwarranted. It may well happen as in the present case that the authority ordering an enquiry and the person appointed to hold one, may be entirely different from the officer entitled to initiate the recording of an annual confidential report or to affirm the same. In such a situation, therefore, one cannot even remotely assume prejudice at all the superior levels and hold that the departmental enquiry would be an empty formality merely because the discovery of certain circumstances and misconduct had *prima facie* led to the recording of an adverse confidential report by the authority concerned.

10. Even in a case where the authority recording the annual confidential report may itself be one empowered to order and hold an enquiry, one cannot and need not assume prejudice merely because of an earlier adverse confidential entry made by it. Indeed, an enquiry would give an opportunity to a delinquent official to explain away the circumstances against him and if possible to establish his complete innocence. No assumption of bias and an inveterate closed mind can be raised against a superior authority merely on the ground that earlier on a subjective assessment, it had *prima facie come* to an adverse conclusion and done his duty of recording the same in the annual confidential report. The law raises the presumption that official acts are fairly and regularly performed and objectivity is obviously expected of the superior ranks of the civil service who would be empowered to direct the holding of

an enquiry and to take punitive action thereafter. Therefore, to imagine a prejudice at all levels, because of an earlier *prima facie* adverse entry in the Annual Confidential Report is indeed seeing ghosts where none exist.

11. Equally the contention that there should be an automatic effacing or a quashing of the earlier adverse confidential report, the moment a departmental enquiry is ordered thereafter seems to proceed from a basic falacy. It deserves highlighting that an adverse entry in the annual confidential report is neither immutable nor something sacrosanct for ever. Both the recording of an adverse entry and even the rejection of a representation against it, is not something which can be equated with the rendering of a final judicial judgment and the consequences of the findings thereon being binding on the principle of *res judicata*. In the matter of the assessment of the conduct of a public servant, the issue can and indeed does remain open obviously till the conclusion of a departmental enquiry. Indeed instances are not lacking where even after a passage of considerable years earlier, annual confidential reports may have to be modified either in favour or even against a public servant. Therefore, the holding of an enquiry subsequent to the adverse confidential report may in actual practice be something beneficial to the delinquent official. If he is able to establish his innocence in these departmental proceedings on the identical material, it would obviously be open for him to represent to the higher authority to modify or expunge the earlier adverse entries in the confidential record on the ground that he had been duly exonerated therefor. On the other hand, if the enquiry establishes the misconduct, then inevitably the earlier adverse annual confidential report receives further confirmation as a result thereof. I am, therefore, unable to see how the holding of a subsequent departmental enquiry would either be necessarily prejudicial to the public servant or would automatically efface the subjective assessment or entitle him to seek a quashing thereof.

12. The view I am inclined to take on principle appears to be equally well buttressed by precedent. In *Parkash Chand Sharma* v. *The Oil and Natural Gas Commission and Ors.*, (4), a Constitution

(4) 1970 S.L.R. 116.

Bench of their Lordships of the Supreme Court had concluded as follows :—

> "It was not disputed that the instructions as to confidential reports have not been properly observed in this case. It is not suggested that the departmental promotion Committee acted *mala fide*. If the adverse remarks were there in the confidential reports it was the duty of the departmental promotion Committee to take note of them and come to a decision on a consideration of them. The Committee could not be expected to make investigation about the confidential reports. It appears to us that in this case there was no discrimination, purposeful or otherwise, and at the best, the Committee's taking into consideration confidential reports with respect to which the petitioner had been given no chance to make a representation was merely fortuitous. In such a state of affairs we are not satisfied that any interference is called for and the rule will therefore be discharged. There will be no order to costs."

Again a Full Bench of the Orissa High Court in *S. S. S. Venkatrao* v. *State of Orissa and others*, (5), after an exhaustive discussion of the case law arrived at the following amongst other conclusions :—

> "(vi). At the time of record of confidential reports, the employee is not entitled to any hearing."
>
> * * * * * *
>
> "(viii) Time prescribed in the circular for communication of the adverse entry is not mandatory but directory. If the adverse entry is not communicated in time, it is not wiped out."
>
> * * * * * *
>
> "(x) Character roll can be acted upon before final disposal of the representation. There is no provision in the administrative instructions that action would await the final

(5) 1974 (2) S.L.R. 899.

disposal of the representation. Such a view would militate against exigencies of public service."

* * * * * *

The question of deciding the representation against adverse remarks in the confidential record was raised in *Ganga Nand Sharma* v. *The State of Himachal Pradesh* (6). Pathak, C.J. deciding against the petitioner observed as follows:—

"Now, it does appear that the proper and right thing would have been for the Government to have ensured that all pending representations against entries in the Confidential Reports of each officer were disposed of before the Departmental Promotion Committee commenced its proceedings. However, I am unable to hold that in omitting to do so the Government contravened any statutory obligation in that regard or that it infringed any legal right of the petitioner. No *mala fides* either can be attributed to the Government. As regards the Departmental Promotion Committee, it was bound to consider the record of each employee as it existed at the relevant time ...."

13. In fairness to Mr. Gupta, reference must now be made to *Bhajan Singh's case* (supra), on which basic reliance was placed. A reference to the passing observation in this context made in para No. 6 of the Report would plainly indicate that the question was not adequately canvassed before the learned Single Judge. No rationale appears therein nor any principle or precedent has been cited. On the contrary, it would appear that the learned Single Judge therein took the view that the Superintendent of Police had no jurisdiction to administer a warning to the delinquent employee on the ground that the issuance of such a warning was itself a punishment which could not be awarded during the pendency of the departmental enquiry against him. The learned Single Judge then proceeded to hold cryptically that the same rationale would apply to the observations in the confidential report. With great respect I am unable to see how there is any absence or failure of jurisdiction in the matter of recording the annual confidential report

(6) 1973 (1) S.L.R. 907.

by a superior authority authorised to do so. Similarly an error has crept-in in equating the imposition of punishment during the pendency of an enquiry with the mere recording of an annual confidential report. As already discussed in the earlier part of the judgment, a departmental enquiry in the context of punishment thereafter is sharply distinct and separate from the subjective assessment enjoyed to be recorded by the superior authority in the form of an annual confidential report. There appears to be no option but to hold that on this specific point the observations in *Bhajan Singh's case* (supra) are not well founded and the same are hereby over-ruled.

14. Coming now to *Kartar Singh's case* (supra), it first deserves to be highlighted that in essence it followed the earlier view in *Bhajan Singh's case* (supra) which has now been over-ruled. The learned Judge also took the view that in recording the adverse annual confidential report, the principle of natural justice had been violated. As has been earlier noticed, for the limited purpose of an adverse entry in the confidential record giving of opportunity to show cause to the delinquent employee is in no way the requirement of law. Considering the confidential nature of these proceedings, the principles of natural justice do not enter at that stage. It is only when punitive action is sought to be taken on that basis or promotion is sought to be denied on that ground that the rules of natural justice may come in and the adverse confidential report may have to be conveyed to the public servant. The fallacy in *Kartar Singh's case* (supra), seems to be in equating punitive action with that of merely the recording of adverse report at the first instance. This judgment also, in my view, does not lay down the law correctly and has, therefore, to be over-ruled.

15. In the light of the fore-going discussion, the answer to the question posed at the out-set is returned in the affirmative and it is held that a departmental enquiry can lawfully be ordered subsequent to the recording of an earlier adverse annual confidential report, on materials which may substantially be the same. Equally, I am of the view that the ordering of such a departmental enquiry would not in any way automatically efface the earlier adverse confidential report or entitle the public servant to secure the quashing thereof. As has already been observed, there would obviously be

no bar to the reconsideration of the adverse annual confidential report, in the light of the findings that may be arrived at in the more elaborate departmental enquiry which may follow.

16. As the basic contentions raised on behalf of the petitioner have been found to be without merit, the writ petition is hereby dismissed with no order as to costs. However, the petitioner does appear to be entitled to an ancillary relief. It seems to be virtually the admitted position that the enquiry proceedings were initiated as far back as 1972, but the result thereof has not been conveyed to the petitioner till now perhaps owing to the pendency of this writ petition itself. We take the view that this inordinate delay deserves to be remedied and therefore direct that the respondent-State would finalize its action on the basis of the enquiry proceedings within two months from today.

S. P. Goyal, J.—I entirely agree.

N. K. S.

Before D. S. Tewatia, J.

PRITAM SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 4732-M of 1980.

January 5, 1981.

Punjab Excise Act (1 of 1914)—*Sections* 61 *and* 75—*Code of Criminal Procedure* (*II of* 1974)—*Sections* 468 *and* 470—*Police filing challan under section* 61 *of the Excise Act—Such challan put in after the expiry of the period of limitation prescribed by section* 75 *of the Act and section* 468 *of the Code—Prosecuting agency seeking special sanction of the State Government under section* 75(2) *of the Act—Such sanction given after expiry of period prescribed in section* 468 *of the Code—Court—Whether can take cognizance of the offence—Section* 470(3) *of the Code—Whether applicable.*