

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

directed to be released from jail forthwith while the bail bonds of Anarjit Kaur, who is on bail, shall stand discharged.

(18) Before parting with this case, we are constrained to remark that in the matter of extra-judicial confessions, there appear to be a growing tendency on the part of the investigating agencies to introduce such confessions and of the nature and quality as in the present case, tending inevitably to create thereby the unfortunate impression of such evidence having perhaps been falsely concocted to bolster up an otherwise unsustainable charge. Such a practice is indeed to be deprecated. We must, however, hasten to add that this is not to be understood as implying that an extra-judicial confession is not or cannot be used as a valuable piece of evidence. It is rather to emphasise that when evidence of an extra-judicial confession is sought to be used, the investigating agencies must ensure that it meets the test of credibility in the light of the observations in *Hari Kishan's* case (supra). We accordingly direct that a copy of this judgment be sent to the Director-Generals of Police of Punjab and Haryana and also to the Inspector-General of Police, Chandigarh, for information and necessary action.

P.C.G.

FULL BENCH

Before : G. C. Mital, K. S. Bhalla and A. L. Bahri, JJ.

KAMAL KUMAR GUPTA,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 8855 of 1988.

3rd August, 1990.

Constitution of India, 1950—Arts. 226/227—Punjab Civil Services (Executive Branch) Rules, 1930—Rules 5, 6 and 7—Rules providing for minimum age limit—No written or viva voce test held—Commission not considering the youngest candidate and candidates above 55 years—Such action—Whether amounts to upsetting the basic qualifications.

Held, it is not the function of an advisory or a recommendatory body to lay down to eligibility qualification or to upset the

basic qualifications laid down by the employer. Its function being only to recommend. The Commission could not lay down parallel and different eligibility conditions to undo the decision already taken by the Government. It could simply consider the six candidates list of whom was referred to it and choose three out of them who according to the Commission be most suitable in order of merit. It having not considered two out of six, setting up its own eligibility criterion has transgressed its authority. This action of the Commission thus on the face of it suffers from plain and indubitable arbitrariness. The criteria adopted by the Commission, therefore, to that extent is bad and untenable.

(Para 13).

Constitution of India, 1950—Art. 16—Punjab Civil Services (Executive Branch) Rules, 1930—Rules 5 to 7—Provision for considering Annual Confidential Reports for last ten years—Commission considering A.C.Rs available on record—Experience determined on the basis of A.C.Rs.—Such action—Whether discriminatory—Failure to record A.C.Rs.—Should not go against employee.

Held, that the contention raised by the Commission that only annual confidential reports available on record were taken into consideration cannot be treated to be fair on its part. The contention in the various returns that a candidate could not earn annual confidential reports for so many years cannot hold good to his disadvantage. Annual confidential reports are never earned by the candidates and in fact they are recorded by superior officers on their own. If for any reason the superior officers were unable or failed to record the same, it was no fault of the candidate and he cannot be put to a disadvantage on that account. Even otherwise in the interest of equality of opportunity guaranteed by Article 16 of the Constitution of India, the Commission was required to spread annual confidential reports of all the candidates over 10 years *pro rata* on the basis of available reports i.e., for the same period or it should have worked out average in case of each candidate and thereafter evaluated in terms or marks. The Commission having not done so, did not provide equal opportunity to all the candidates required to be considered by it.

(Para 16).

Held, that experience in line or service is determined by the working period put in by a candidate in any such service and not on the basis of annual confidential reports recorded or available. First of all mere non-availability of annual confidential report cannot possibly be taken to be conclusive proof of its non-recording. Again, even if annual confidential report is not recorded if a person worked in the service for which it was not recorded, it cannot be said that he had no experience in line or service for that period. Evaluation under the head experience in line therefore should have been made

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

on the basis of length of service put-in and not the length of period for which annual confidential reports were available. In these respects, the criteria laid out by the Commission thus was not fairly implemented resulting in discrimination. This for obvious reasons has vitiaged the selection which deserves to be quashed on that score as well.

(Para 17).

Punjab Civil Services (Executive Branch) Rules, 1930—Rls. 5 to 7—Use of term “unless the Government otherwise directs”—Basic qualifications provided in rules—Whether can be relaxed.

Held, that the use of the term ‘unless the Government otherwise directs’ clearly indicates that power of relaxation was conferred on the Government in specific terms. In other words, it is crystal clear from the rules that basic qualifications for consideration of the names of persons working as Tehsildars/Naib-Tehsildars for their acceptance for entry into Register A-I as prescribed in the rules could be relaxed by the Government and said unassailable power vests in the State Government as per scheme of the rules.

(Para 3).

Case referred by the Division Bench consisting of Hon’ble Mr. Justice M. M. Punchhi and Hon’ble Mr. Justice Ujagar Singh on 10th August, 1989 to a Larger Bench for deciding the imporants question of Law involved in the case. The Full Bench consisting of Hon’ble Mr. Justice G. C. Mital, Hon’ble Mr. Justice K. S. Bhalla and Hon’ble Mr. Justice A. L. Bahri, decided the case finally on 3rd August, 1990.

Amended Writ Petition under Articles 226/227 of he Constitution of India praying that the petition may be accepted and records of the case be called for. After perusal of the same issue :—

- (i) *A writ in the nature of Certiorari or any other appropriate writ, order or direction for queshing the order dated 3rd October, 1988 (Annexure P-3) on the basis of recommendations of the Haryana Public Service Commission made on 22nd September, 1988 for entry in Register A-I for appointment to Haryana Civil Services (Executive Branch).*
- (ii) *A writ in the nature of mandamus directing the respondent No. 2 to recommend the name of the petitioner for inclusion in Register A-I for appointment to Haryana Civil Services (Executive Branch) and to grant all consequential benefits i.e. pay, seniority etc. from the day vacancies for the year 1983 are filled.*

-
- (iii) *Any other appropriate, writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
- (iv) *That the respondents be directed to produce the record of the candidates for perusal of this Hon'ble Court.*
- (v) *The petitioner may be exempted from filing certified copies of the Annexures alongwith copy of recommendations dated 22nd September, 1988.*
- (vi) *The petitioner may be exempted from serving advance notices of the petition to the respondents.*
- (vii) *The cost of the writ petition be allowed to the petitioner. Hemant Kumar, Advocate, for the petitioner.*

S. K. Sood, D.A. Haryana, for Respondent No. 1.

J. L. Gupta, Sr. Advocate, with Vikrant Sharma, Advocate, for Respondent No. 2.

S. S. Nijjar, Sr. Advocate with T. P. Singh, Advocate, for Respondent No. 3.

C. M. Chopra, Advocate, for Respondent No. 4.

JUDGMENT

K. S. Bhalla, J.

Through these writ petitions, selection to the Haryana Civil Service (Executive Branch) (hereinafter called 'the Service') of the State of Haryana from amongst the officers serving as Tehsildars and Naib Tehsildars in the said State with regard to the year 1983 has been assailed and it is claimed that order dated 3rd October, 1988 (Annexure P-3) with regard to appointment of Sarvshri Ram Chander Sharma, Ashok Vashisth and Ram Chander, respondents No. 3 to 5, respectively to the Service, made by the Governor on behalf of respondent No. 1 the State of Haryana, on the basis of recommendations of respondent No. 2, the Haryana Public Service Commission (hereinafter called 'the Commission') made on 22nd September, 1988, be quashed. Selection to the Service is made under the Punjab Civil Service (Executive Branch) Rules, 1930 (hereinafter called 'the Rules') as applicable to the State of Haryana in four different

Kamal Kumar Gupta *v.* State of Haryana and others
(K. S. Bhalla, J.)

modes and from even number of different sources. The Chief Secretary of the State is required to maintain four types of Registers of accepted candidates and appointments are made therefrom. Register A-1 out of them relates to Tehsildars and Naib Tehsildars and in these writ petitions we are concerned with the said Register only.

2. The relevant rules with regard to recruitment to the Service including the procedure for the recruitment from the concerned source, are 5 to 7 of the Rules and they are reproduced as under for facility of reference:—

“5. *Members to be appointed by the Governor of Haryana from among accepted candidates.*—Members of the Service shall be appointed by the Governor of Haryana from time to time as required from among accepted candidates whose names have been duly entered in accordance with these rules in one or other of the registers of Accepted Candidates to be maintained under these rules :

Provided that if in the opinion of the State Government the exigencies of the Service so require, the State Government may make special recruitment to the Service by such methods as it may by notification specify, after consultation with the Public Service Commission.

6. *Registers to be maintained.*—The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely :—

- (a) Register A-1 of Tehsildars and Naib-Tehsildars accepted as candidates;
- (b) Register A-II of members of Class III Service accepted as candidates;
- (c) Register B of persons accepted as candidates on the result of a competitive examination; and
- (d) Register C of Block Development and Panchayat Officers.

7. *Selection of candidates for Register A-I.*—(1) The Financial Commissioner Revenue, shall, by a date to be determined by the State Government prepare a list of Tehsildars/Naib-Tehsildars and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the State Government from time to time; provided that unless the Government otherwise directs, the name of a person shall not be submitted who—

(a) (i) has not completed five years' continuous Government service;

(ii) has attained the age of forty-five years; on or before the date on which the names are required to be submitted before the committee; and

(b) is not a graduate of recognised University.

(2) The committee mentioned in sub-rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Haryana Public Service Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered in the Register A-I'.

(3) As is obvious from the rules cited above, different authorities have different functions to discharge with regard to the relevant recruitment, the final authority undisputably being the State Government. Rule 7, which provides procedure for selection of candidates for placing their names in Register A-I makes it clear that the process of recruitment is initiated by the State Government and final action also vests within the discretion of the State Government. Before the process of selection is initiated, State Government is required to determine the date by which the first functionary is to act. Sub-rule (1) of Rule 7 of the Rules further indicates that power would vest in the State Government to relax one or more normal qualifications for selection. The normal qualifications as provided in the proviso thereto are;

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

- (i) completion of five years of continuous Government service,
- (ii) before attaining the age of 45 years, and
- (iii) graduation from a recognised University.

The use of the term 'unless the Government otherwise directs' clearly indicates that power of relaxation was conferred on the Government in specific terms. In other words, it is crystal clear from the rules that basic qualifications for consideration of the names of persons working as Tehsildars/Naib-Tehsildars for their acceptance for entry into Register A-I as prescribed in the rules could be relaxed by the Government and said unassailable power vests in the State Government as per scheme of the rules.

(4) The first functionary in the process of selection is the Financial Commissioner Revenue. He is required to prepare a list of Tehsildars/Naib-Tehsildars and submit the same for the consideration of a Committee by the date to be determined by the State Government. In so doing, he perhaps has simply to see whether the person working as Tehsildar/Naib-Tehsildar satisfies the initial qualifications prescribed in the rules subject to the modification, if any, by the State Government for particular selection. Sub-rule (1) of Rule 7 thus, as we understand the same, entitles a person working as Tehsildar or Naib-Tehsildar for consideration for selection to the Service if he satisfies the minimum qualifications.

(5) The aforesaid Committee shall consist of the Chief Secretary as Chairman and two such other officers as members, as may be nominated by the State Government from time to time. The function of that Committee, which shall hereinafter be referred to as screening committee by us, is only to consider all the names forwarded by the Financial Commissioner Revenue and cut short the list to the extent of twice the number of vacancies of persons considered suitable for being entered in Register A-I. This suitability naturally is to be judged by the screening committee and only those persons could be considered suitable for inclusion in its list who are so found to the assessment of the said committee. No doubt, it is nowhere mentioned in sub-rule (2) of Rule 7 of the Rules that the screening committee is required to prepare its list in order of merit, but it has necessarily to do so if the provision is to be followed in its strict sense. The word 'suitable' is not to be

understood in terms of 'pass marks' or mere fitness for selection for the simple reason that the list submitted by the Financial Commissioner Revenue, howsoever unwidely, it may be, has to be cut short to the extent of twice the number of vacancies available. The number of eligible candidates is bound to be large and where the same is to be reduced to very small mere suitability cannot prove decisive and merit shall have to be considered to enable the Committee to select first few from amongst the suitables. It may have to reduce the number to one-tenth at times. For instance if more than 50 persons satisfy the requisite minimum qualifications for selection and their list is forwarded for the purpose, more than 20 out of them may be suitable for selection in the ordinary sense of the term. However, if the vacancy is one, the screening committee is required to forward a list of two only and if the vacancies available are two it is required to forward a list of four persons. Once a list is meant to be cut to a particular size, the merit of the persons available in the list shall have to be looked into. When hand picking is required, the only reasonable way of selection is on the basis of merit and none-else. The screening committee's function is to forward its list to the Commission. Only thereafter the Commission comes into picture. Thus, by necessary implication the element of merit does play its part in the screening made by the committee headed by Chief Secretary of the State and the list forwarded to the Commission is to be taken to the selection by the screening committee on merit. The said list therefore has to be in order of merit and contention of learned counsel for the respondents that the Committee is not required to select in order of merit cannot hold good.

(6) The function of the Commission is to select the most suitable persons out of the list forwarded to it by the screening committee. It is required to reduce the number of selectees to half i.e., equal to the number of vacancies available and to recommend their names in order of merit. The recommendation has to be made to the State Government for being selected as candidates for entry into Register A-I and thereafter the names of the persons so selected shall be entered into the said Register. It is more than clear from the language adopted in sub-rule (2) of Rule 7 of the Rules that the Commission is only an advisory and recommendatory body and the final authority of selection lies with the State Government. The Commission recommends names in order of merit for being selected as candidates, selection is made

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

by the State Government and thereafter the names of the persons so selected are entered in the Register. However, normally the recommendations of the Commission prevail.

(7) In the present case, it is common case of the parties that selection was made for the year 1983 and the State Government notified three vacancies with regard to the said selection from amongst Tehsildars/Naib-Tehsildars on 9th January, 1987. The prescribed date for fulfilling the prescribed qualifications was fixed as 1st January, 1983 and the State Government in exercise of the powers vested in it directed that persons upto the age of 52 years were to be considered besides embracing the other two qualifications and further directed that they should not have more than one living spouse. After screening of the original list forwarded by the Financial Commissioner Revenue, the committee headed by Chief Secretary of the State of Haryana forwarded a list of following six suitable persons i.e. twice the number of vacancies announced to be filled by the State Government :—

- (1) Shri K. K. Gupta,
- (2) Shri R. K. Pandov,
- (3) Shri R. C. Sharma,
- (4) Shri Ashok Vashisth,
- (5) Shri Ram Chander,
- (6) Shri Dalip Chand Gupta,

As is clear from the Gradation list of Tehsildars (Annexure P-1 and Annexure R-1) their names are not in the order of seniority because Ashok Vashisth is at No. 11, K. K. Gupta at No. 13, Raj Kumar Pandov at No. 25, Dalip Chand Gupta at No. 26, Ram Chander at No. 30 and Ram Chander Sharma at No. 32. This clearly reinforces that their selection was made by the screening committee in order of merit and the list forwarded by it to the Commission determined the merit of the candidates whose names were forwarded to the Commission as found by the said committee. Out of those suitable persons, the Commission selected Sarvshri R. C. Sharma, Ashok Vashisth and Ram Chander as most suitable in the said order of merit excluding Sarvshri K. K. Gupta, R. K.

Pandov and Dalip Chand Gupta and recommended their names for being selected as candidates for entry into Register A-1. On the basis of the said recommendation of the Commission, Sarvshri Ram Chander Sharma, Ashok Vashisth and Ram Chander were appointed to the Haryana Civil Service (Executive Branch),—*vide* order dated 3rd October, 1988, Annexure P-3. Feeling aggrieved by the said selection Shri K. K. Gupta preferred Civil Writ Petition No. 8855 of 1988 whereas Shri K. K. Pandov independently preferred Civil Writ Petition No. 11555 of 1988 wherein selection by the Commission has been assailed and order of appointment of respondents No. 3 to 5 is sought to be quashed. This judgment of ours shall take care of both these writ petitions, as they are directed against the same selection.

(8) The Commission in discharge of its function of selection of most suitable persons by reducing the number of acceptable candidates from six to three admittedly did not hold any written or *viva-voce* test. It goes without saying that its selection was required to be objective and not subjective in nature. For objective satisfaction in the given situation i.e., in the case of persons of matured personality, as all the candidates were bound to be, interview test perhaps may have been the only proper way subject to basic and essential academic and professional requirements being satisfied. But for the reasons best known to the Commission it was not resorted to. On the other hand, the Commission felt content to look into the service record only. It has been observed in para No. 9 of the return of respondent No. 2 that the service record of the candidates was sufficient to determine their merit. It has further been alleged by the said respondent that from the service record they took into consideration educational qualification, experience, nature of experience, age, capability, capacity, aptitude, suitability and seniority. No doubt the Commission is master of its working and the Courts normally are not entitled to question the mechanism of selection. The function and authority of the Court of course is limited. But at the same time, the contention of the learned counsel for Respondent No. 2 cannot be accepted that the Courts are not competent to interfere unless bias is alleged on the part of the Commission in one way or the other. The Commission has inherent jurisdiction to regulate its functioning and devise modes and methods for effective discharge of its functions and it also is not disputed that in normal circumstances, the High Court is not competent to review the assessment. It has often been observed

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

by the apex Court that judicial review is not possible except in exceptional circumstances. It has been pointed out in *Ashok Kumar Yadav v. State of Haryana* (1), that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. Sometimes, marking becomes unfair and defective such as marking under different heads may lead to distorted picture. It has also been noticed by the higher Courts that unduly high percentage of marks for interview often suffers from the vice of arbitrariness. Realising that, rate of 15 per cent was prescribed for all Public Service Commissions. This necessarily means that Courts are tempted to interfere if and when scope of arbitrariness is fairly high. It is vital to the maintenance of rule of law in a welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. Therefore to suggest that constitutional functions and the mechanism of selection exercised by the Commission cannot be gone into by this Court under any circumstances, is unacceptable to the recognised legal notions.

(9) If we look to the peculiar features of this case, keeping aforesaid legal position in the background, it is not possible to conclude that everything was done by the Commission in a just and fair manner. As is obvious from the return filed on behalf of respondent No. 2 many facts with regard to the petitioners have been wrongly mentioned therein. For instance, it is wrongly mentioned in the return of the Commission that K. K. Gupta was youngest in age or junior most or that R. C. Sharma had longer experience in service than that of Mr. Gupta. On these points the Commission stands falsified by the record as per Gradation List Annexure P-1 as well as Annexure R-1. Because the selection was made simply by perusal of the record, these discrepancies in the return were bound to leave an impression on the mind of the Hon'ble Judges of the Division Bench with whom the case was then pending that the record of the petitioners was not properly perused or appreciated. Moreover, the merit determined by the screening committee which was headed by the Chief Secretary of the State who in their official capacity and standing obviously were better

placed for appreciation of service record too was badly shaken by the Commission so as to drop their number 1 and 2. That also to our mind adversely reflected against the Commission. In the light of these circumstances, in order to peep into the same the Division Bench was constrained to call for the criteria adopted by the Commission. It has been specifically mentioned by the Division Bench in its order of reference dated August 10, 1989 that they found *prima facie* that the return was fairly discrepant with regard to the actual facts as were found from the Gradation List of Tehsildars/Naib Tehsildars prepared by the Revenue Department and the result achieved by the Commission on some particulars, and that for the purpose they wanted to have the matter elucidated. So they had sent for the Chairman of the State Public Service Commission through the Commission's counsel, at that juncture.

(10) The Division Bench took the Chairman of the Commission to their Chamber and put him general questions choosing at that stage to maintain the secrecy of the selection. Their idea by then being simply to elucidate the matter for the purposes of their judicial satisfaction. During said conversation, the Chairman revealed as shown in the reference order that the criteria in question was laid out soon before the selection and that the criteria observed in the selection of the year 1982 or of the year earlier thereto was not preserved or repeated. He also conceded that the entire record of Service inclusive of A.C.Rs. etc. was present with the Commission before hand for a considerable period. The Court became apprehensive on account of said revelations and it has been observed in the reference order that the Hon'ble Judges constituting Division Bench had their reservations in that regard as to whether in the prior presence of the data thus available, a fair criteria could be evolved thereafter. We also feel that in all fairness criteria for selection should be laid out on receipt of requisition and not after the receipt of entire record and data concerning various candidates out of whom selection was to be made by the Commission. Whenever criteria is laid out after the receipt of whole record and data possibility of the same being tailor-made cannot be ruled out. Thus in the peculiar circumstances of the case calling for the criteria adopted by the Commission and the result sheets by the Court for perusal was justified.

(11) After going through the criteria and the result sheets which were counter-signed by the Judges of the Division Bench, the Division Bench considered it proper in fairness to all concerned to break the seal of secrecy by recording in the reference order

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

what the Chairman had told them in Chamber and also placed photostat copies of those papers on the record. That is how the said documents formed part of the record and thus were made available for the scrutiny of the Court. Keeping the aforesaid various factors in view with particular reference as to whether in these circumstances, the element of arbitrariness could enter or not the Division Bench felt that such question was of wide amplitude and likely to a rise in a large number of cases not only in this particular service but in other Services as well, and so they referred these cases for decision by a Full Bench.

(12) On perusal of the criteria we have noticed that question of age has proved easy tool in the hands of the Commission to rule out certain candidates and to run down another. Candidates who had crossed 55 years on the date of recommendation i.e. 22nd September, 1988 were not considered at all and were rejected outright. Petitioner R. K. Pandov became casualty to the said axe of the Commission. The adoption of the said criteria by the Commission on the face of it is bad and selection on the basis thereof cannot be sustained. It has been accepted by all the respondents in their returns that the petitioners possessed right to be considered, although according to them they had no right for automatic selection. R. K. Pandov having not been considered, naturally was denied the said right which admittedly vested in him. The same was the case with Dalip Chand Gupta although he did not prefer to assail their selection by the Commission.

(13) Again only the employer is competent to decide regarding the qualification for eligibility of a post. Age gives only eligibility qualification and is not relevant for any other purpose. The State Government who alone, as discussed in the earlier part of this judgment, is empowered under Rule 7(1) of the Rules to direct otherwise made a person eligible for selection if he was not more than 52 years on 1st January, 1983. Relaxation in age was made from 45 to 52 years and the Government perhaps so directed for the reason that it had acted in regard to selection concerning year 1983 sufficiently late that is after four years in the year 1987. If so, there was a valid reason for the State Government in making that relaxation or so directing otherwise. The person who was just 52 years or little less on 1st January, 1983 was bound to cross 55 years on 22nd September, 1988 and thus the Commission by the said criteria set at naught the decision of the State Government who was the final authority for selection and recruitment. It is not the

function of an advisory or a recommendatory body to lay down eligibility qualification or to upset the basic qualifications laid down by the employer. Its function being only to recommend the Commission could not lay down parallel and different eligibility conditions to undo the decision already taken by the Government. It could simply consider the six candidates, list of whom was referred to it and choose three out of them who according to the Commission be most suitable in order of merit. It having not considered two out of six, setting up its own eligibility criterion has transgressed its authority. This action of the Commission thus on the face of it suffers from plain and indubitable arbitrariness. The criteria adopted by the Commission, therefore, to that extent is bad and untenable.

(14) Further, the Commission in its criteria gave negative marking to the extent of 7 marks per year to the persons who had attained age of 50 years but not crossed the age of 55 years on the date of recommendation, also making it clear that more than a period of six months upto one year was to be counted as full one year. Every year of the age put in service adds to one's experience and experience in line was allowed two marks per year in the criteria laid down by the Commission. In other words, beyond the age of 50 years, putting in service of six months and above was made to scratch an experience of $3\frac{1}{2}$ years. This obviously is a clear instance of marking under different heads leading to distorted picture and has proved more than unfair to the class of candidates who had crossed $50\frac{1}{2}$ years at the time of recommendation. It was observed in para 8 of *Lila Dhar v. State of Rajasthan* (2), that the award of marks under different heads may lead to a distorted picture of the candidate on occasions so as to make the method of marking unfair and defective. Perhaps that is why the totality of the impression created by the candidate on the interviewing body has been considered to give a more accurate picture of the candidate's personality and for said reason *viva voce* test has been considered to be the best for objective satisfaction. The criteria adopted by the Commission thus is partly bad on account of the manner in which the age of the candidates has been taken into consideration, and we are left with no option but to quash the selection made on its basis.

(15) Besides the age which part of the criteria was used to evaporate two candidates and run down another and has been held to be bad, the Commission in the process of selection of most suitable candidates evaluated their record from four angles *viz.*, seniority, educational qualifications, experience in line as Tehsildar and Naib

Kamal Kumar Gupta v. State of Haryana and others
(K. S. Bhalla, J.)

Tehsildar and annual confidential reports recorded by their superior officers. Much fault cannot be found with the criteria laid down by the Commission from those angles and irrespective of the fact that on account of inproportionate provision of marks under various heads it may not be considered to be perfect, because such view was possible, the conduct of the Commission in so doing may not be considered to be arbitrary, unfair or defective so as to call the same into question. It is not disputed that Courts cannot probe into the mental process of Selection Committee and criteria laid down by them should not be interfered into lightly. We, therefore, hold that part of the criteria to be good. However, its implementation has not been done fairly so far as the assessment of annual confidential reports etc. are concerned.

(16) Although it was decided that annual confidential reports for the last 10 years preceding to the notional date were to be considered yet they were not considered for uniform period in case of all candidates. As is obvious from the result sheets in case of Ram Chander it was considered for 9 years one month, in the case of Ashok Kumar Vashisth for 6 years 4 months, in the case of K. K. Gupta for 5 years 6 months, in the case of Ram Chander Sharma for 8 years one month, in the case of Raj Kumar Pandov for 9 years 8 months and in the case of Dalip Chand Gupta for 8 years 5 months. It has been contended on behalf of the Commission that only annual confidential reports available on record were taken into consideration. This cannot be treated to be fair on its part. The contention in the various returns that a candidate could not earn annual confidential reports for so many years cannot hold good to his disadvantage. Annual confidential reports are never earned by the candidates and in fact they are recorded by superior officers on their own. If for any reason the superior officers were unable or failed to record the same, it was no fault of the candidate and he cannot be put to a disadvantage on that account. Even otherwise in the interest of equality of opportunity guaranteed by Article 16 of the Constitution of India, the Commission was required to spread annual confidential reports of all the candidates over 10 years pro-rata on the basis of available reports i.e., for the same period or it should have worked out average in case of each candidate and thereafter evaluated in terms of marks. The Commission having not done so, did not provide equal opportunity to all the candidates required to be considered by it.

(17) Further, experience in line as Tehsildar and Naib Tehsildar was worked out by the Commission for the time for which annual confidential reports were available. Experience in line or service is determined by the working period put in by a candidate in any such service and not on the basis of annual confidential reports recorded or available. First of all mere non-availability of annual confidential report cannot possibly be taken to be conclusive proof of its non-recording. Again, even if annual confidential report is not recorded if a person worked in the service for which it was not recorded, it cannot be said that he had no experience in line or service for that period. Evaluation under the head experience in line therefore should have been made on the basis of length of service put in and not the length of period for which annual confidential reports were available. In these respects, the criteria laid out by the Commission thus was not fairly implemented resulting in discrimination. This for obvious reasons has vitiated the selection which deserves to be quashed on that score as well.

(18) To sum-up, the criteria laid out by the Commission has been found to be partly bad and partly not implemented properly so as to deny equal opportunity to all the candidates required to be considered by the Commission. Civil Writ Petition No. 8855 of 1988 and 11555 of 1988 are, therefore, allowed, selection/recommendation made by the Commission on 22nd September, 1988 and order or appointment dated 3rd October, 1988 (Annexure P-3) made on the basis thereof, are hereby quashed and the Haryana Public Service Commission is directed to make fresh selection/recommendation of three most suitable persons out of the six names forwarded to it by the Committee headed by Chief Secretary to the State irrespective of subsequent developments, on the basis of criteria held good, after excluding the part relating to age, applying the rest again with regard to assessment of annual confidential reports and experience in line in the light of observations made above and tabulating the result afresh, within two months from the receipt of the order. The fresh recommendation shall be treated to have been made on 22nd September, 1988 and the candidates so recommended shall be entitled to all service benefits available to Haryana Civil Service (Executive Branch) since thereafter irrespective of any subsequent developments. No order for costs is, however, made.

P.C.G.