

# RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Shri Guman Singh

Special Appeal No. 57 of 1968  
(Jagat Narayan, C.J. And L.N. Chhangani, J.)

20.01.1970

## JUDGMENT

**JAGAT NARAYAN, C.J.**

1. This is a special appeal against a judgment of a learned Single Judge in writ petition No. 79 of 1967\*under Article 226 of the Constitution by which he held R. 28-B (2) of the Rajasthan Administrative Service Rules 1954 to be void and parts of the circular dated 27-8-66 "bad" and in consequence issued a direction that the four officers of that Service who had been impleaded in the writ petition namely Sarva Shri R. D. Mathur, S. C. Pagoria, Munna Lal Goyal and Prithvi Singh shall not hold senior scale posts.

\* Reported in AIR 1970 Raj173.

2. The writ petition was filed by Shri Guman Singh, a member of the R. A. S. who was considered for promotion but was not promoted by the Departmental Promotion Committee to the senior scale, but the above four officers along with several others were promoted. These four officers alone were impleaded as they were junior to the petitioner in the ordinary time scale and the others who were promoted were senior to him.

3. The Rajasthan Administrative Service was constituted in 1954, and officers belonging to various covenanting States were appointed to it initially. Under the R. A. S. Rules 1954 (hereinafter referred to as the Rules) recruitment to the Service is made from different sources as enumerated in Rule 7. Broadly speaking one source is a competitive examination held by the Public Service Commission and the other sources are selections from specified categories of subordinate services. In 1957 an emergency

recruitment took place in which selection was made from amongst other categories of subordinate services as well as from several other classes including persons in private service through the Public Service Commission which held a limited competitive examination.

4. The petitioner was an Inspector in the Excise Department from 1948 and was recruited to the Service from this source. Sri R. D. Mathur respondent, was also recruited from this source. Sri S. C. Pagoria and Shri Munna Lal Goyal, respondents, were recruited in 1956 as a result of a competitive examination held by the P. S. C. Sri Prithvi Singh, respondent, was promoted from amongst Tehsilders in 1957.

5. There are three grades in the R. A. S. :-

- (1) Ordinary time scale Rs. 285-800 (hereinafter referred to as the Junior Scale)
- (2) Senior Scale Rs. 500-1150.
- (3) Selection grade Rs. 900-1500.

In this case we are concerned with promotion from Junior scale to Senior Scale. Formerly this promotion was made on the basis of seniority-cum-merit on the recommendation of a D. P. C. Government had issued a confidential circular in 1960 No. F. 1 (6) Appts. 'D'/60 dated 31-8-60 under which merit was to be evaluated by allotting marks on the previous record of the officer. This circular was applicable to all State Services except the Rajasthan Judicial Service or the Rajasthan Higher Judicial Service which are under the control of the High Court.

6. The System of marking was as follows :-

"(i) Confidential Rolls for the last 5 years may be examined. 5 marks be allotted for each years' confidential roll and marking be done in accordance with the following formula :-

1. Excellent	...	5 marks
2. Very good	...	4 marks
3. Good	...	3 marks
4. Satisfactory	...	2½ marks
5. Unsatisfactory	...	2 marks

6. Adverse	...	1½ marks
7. Adverse with punishment	...	1 mark

(ii) The entire record previous to the last 5 years be allotted 50 marks and the marks be allotted on the following basis :

1. Average or good record, 50 marks.
2. Deduction upto 5 marks for each punishment awarded. (No deduction is made for mere warning but where warning has been recorded in a Confidential Roll it should be treated as punishment and marks should be deducted)."

On the basis of the above marking only such officers were to be considered for promotion as had secured at least 62½ marks out of the total of 75 marks. If a junior person had secured more marks he was not to be preferred to a senior man who had secured at least 62½ marks.

7. It was stated that the above marking system was in the nature of administrative instructions which should be kept in view by various selection committees while making promotions to the various posts as provided in the Service Rules. These committees were at the same time enjoined to exercise their own discretion while applying the principles laid down in the circular in view of the fact that occasionally the confidential rolls may not have been written with full sense of responsibility.

8. The above system of assessing merit has remained in force since then in Rajasthan for promotion to all the executive services. Minor modifications were made in the circular from time to time and the last circular is secret circular No. F. 1(6) Appts. D/60 dated 27th August 1966 (Annexure 2), which is the subject of controversy in the present case.

9. To ensure greater efficiency in the functioning of Government departments and to provide better incentive to Government servants to improve their efficiency the Government of Rajasthan took a policy decision sometime in the year 1965 that half of the vacancies in the selection posts which were till then filled on the basis of seniority-cum-merit should be filled on the basis of merit alone. To give effect to it Appointments (A-II) Department's Notification No. F. 1 (6) Appts. D/60 dated 14-12-65 was published in the Rajasthan Gazette Extraordinary dated 15-12-65. By this notification the rules of all the 35 State Services mentioned in it were amended. It was provided in this notification that selection strictly on the basis of merit shall be made

from amongst persons who are otherwise eligible for promotion : the number of eligible candidates to be considered for the purpose shall be ten times the total number of vacancies to be filled in on the basis of merit and seniority-cum-merit provided such number is available; where the number of eligible candidates exceeds ten times the number of vacancies, the requisite number of senior-most persons shall be considered for the purpose. The number of candidates to be considered for each vacancy to be filled on the basis of merit was fixed by a policy decision of the Government. The proposal of the Chief Secretary was that this number should be ten times the total number of vacancies to be filled on the basis of merit. But the cabinet was of the opinion that this would restrict the field of selection by merit unduly. Therefore the Government decided that officers numbering ten times the total number of vacancies to be filled on the basis of merit as well as on the basis of seniority-cum-merit should be considered to fill the vacancies on the basis of merit alone.

10. We are told that recruitment to senior posts in some of the Services was made on the above basis and it was found that the number of supersession's was abnormally large. Service Rules were accordingly amended under Notification No. F. 1 (6) Apptts. D/60/Pt. II dated August 26, 1966 published in the Rajasthan Gazette Extraordinary dated August 27, 1966. The number of vacancies to be filled by merit was reduced from one-half to one-third. The number of candidates to be considered for promotion to fill the vacancies on the basis of merit was retained at ten times the total number of vacancies to be filled but the following proviso was added :-

"Provided that for the first promotion in the same cadre (from a lower grade to a higher grade) against the merit quota, only such of the persons shall, unless a higher period is prescribed elsewhere in these rules, be eligible who have put in not less than six years service in the lower grade of the cadre."

11. By the first notification dated 14-12-65 Rule 27 (2) of the Rajasthan Administrative Service Rules, 1954 was deleted and Rule 28-B was inserted. It contains a provision for recruitment by selection on the basis of merit. Rules 27 and 28-B however occur in Part V which lays down the procedure for recruitment by promotion to the Service. Rule 32 which regulated appointment to the senior posts in the Service, which occurs in part VII, was left unamended by inadvertence. So it became necessary to issue another notification No. F 1 (6) Apptts. D/60/Pt. II dated 8-9-66 which was published in the Rajasthan Gazette Extraordinary dated September 9,

1966. For the existing R. 32 which provided for promotion, on the basis of seniority-cum-merit the following rule was substituted :-

"32. (1) Appointment to senior posts. Appointment to Senior Scale and selection grade posts shall be made by Government from amongst the members of the service on the basis of merit and seniority-cum-merit in the ratio of 1:2 on the recommendations of a Committee which shall consist of the following :-

(1) Chairman, Rajasthan Public Service Commission, or a Member nominated by him. Chairman.

(2) Chairman, Board of Revenue. Member.

(3) Commissioner, Development Department. Member.

(4) Special Secretary to Government in the Appointment Department Member Secretary.

(2) Except as provided in this rule, the procedure and the principles for selection by merit shall, in so far as it may apply, be the same as provided in Rule 28-B. For selection by seniority-cum-merit, the Committee shall consider the cases of all the persons eligible for promotion by examining their confidential Rolls and personal files and interviewing such of them as they may deem necessary, and shall select a number of candidates equal to the number of vacancies likely to be filled by promotion by seniority-cum-merit;

Provided that Government may fill a vacancy in the senior scale or selection grade posts temporarily by appointment thereto for a period not exceeding six months in an officiating capacity, any member of the service who is eligible for such appointment under the rules."

12. The procedure and principles for selection by merit provided by Rule 28-B are contained in sub-rule (2) of it which runs as follows:-

"Selection strictly on the basis of merit shall be made from amongst persons who are otherwise eligible for promotion under these rules; the number of eligible candidates to be considered for the purpose shall be ten times the total number of vacancies to be filled in on the basis of merit and seniority-cum-merit provided such number is available, where the number of eligible candidates exceeds ten times the number of vacancies, the requisite number of senior most persons shall be considered for the purpose :

Provided that for the first promotion in the same cadre (from a lower grade to a

higher grade) against the merit quota, only such of the persons shall unless a higher period is prescribed elsewhere in these rules be eligible who have put in not less than six years service in the lower grade of the cadre."

13. The secret circular giving administrative instructions for making promotions on the basis of seniority-cum-merit was amended so as to provide for making selection on the basis of merit also. In the first para of this circular dated 27-8-66 it is stated that Government are pleased "to issue the following instructions for the guidance of all selection promotion committees and appointing authorities mentioned in the statutory service rules. These administrative instructions and the statutory service rules should together be taken as a complete code on the subject." (Underlining ours).

14. The system of marking laid down in this circular is substantially the same as was laid down in the circular of 1960, which was followed for marking promotions to selection posts on the basis of seniority-cum-merit all these years in all the State Services. The following changes were made:-

(1) So far as the last 5 years of the Service are concerned the only change was that the Committee was entitled to give upto 5 marks in addition to the marks already obtained by him if an officer has been awarded either "merit pay" or "cash award". There is no controversy in this case about this change. It is not alleged that any out of the officers selected was given a merit pay or a cash award.

(2) So far as the record of Service for the remaining years is concerned the only change was that the maximum number of marks which could be deducted for each punishment were reduced from 5 to 2. Further it was provided that this deduction would only be made at the first selection at which the case of the officer is considered.

The circular lays down that only officers who get a minimum of 65 marks can be considered for promotion to posts in the merit quota. The provision with regard to promotion to posts under the seniority-cum-merit quota remains unchanged in this circular. An officer getting 62½ marks is entitled to promotion to posts in this quota.

15. Para 6 lays down that those persons who secured less than 62½ marks, but not less than 61 marks should be called for interview by the Committee. Also those whose

character rolls are missing or those whose character rolls could not be prepared as they were absent for study or training outside India may also be called for interview. The Committee can also seek the assistance of an expert in appropriate cases and his advice, as far as acceptable to the Committee, shall be taken into consideration in the assessment of the confidential rolls.

16. Para 7 provides that if adverse remarks have not been communicated to the officer or his representation against them has not been decided by the appropriate authority, the Committee should call him for interview after communicating the adverse remarks to him so that he may come prepared with what he has to say in the matter. If after the interview the Committee feels that the adverse remarks are not justified then it shall treat them as expunged.

17. Para 8 lays down that in case of persons who have gone for study or training abroad the character rolls pertaining to the previous 5 years should be taken into consideration.

18. Para 9 gives power to the Committee to take into consideration the fact that some officers are too liberal in the assessment of their subordinates while some might be miserly or strict or even vindictive. It was also entitled to find out about the reputation enjoyed by reporting officers for efficiency, impartiality and integrity and to assess the confidential reports written by them accordingly.

19. In para 10 it was stated that "the above instructions should be strictly kept in view while persons are considered for promotion, the reason being that evaluation and assessment of confidential rolls make or mar service prospects of Government employees."

20. We are of the opinion that the above circular is very elastic and gives a wide discretion to the Committee to assess the merit of the officer. There is nothing mechanical about it. It is for the Committee to judge whether a report is excellent, or very good, or good, or satisfactory, or unsatisfactory or adverse. The matter does not end there. The Committee can ascertain about the reputation of the reporting officers as to whether they were liberal in giving good remarks or were miserly or strict or vindictive or inefficient, partial and of doubtful integrity. On the basis of such an

enquiry the Committee were entitled to treat a good report as bad and a bad report as good and give marks accordingly. If an officer gets 61 marks only the Committee can interview him. The Committee can ascertain the reputation of the reporting officer. It is implicit in the circular that the Committee may increase the marks so that the candidate becomes eligible for selection. We are of the opinion that the Committee may similarly increase the marks in any other situation which may arise but which has not been provided for in the circular. It is not possible to make an exhaustive list of every contingency which may arise before the Committee and to make provision for it in a circular of this nature. We are accordingly of the opinion that despite the fact that it is stated in it that the Rules and the circular form a complete code the Committee is free to exercise its discretion in judging the merit of a candidate in any particular case not foreseen in the circular. Of course the discretion cannot be exercised arbitrarily. Guide-lines for the exercise of the discretion have been laid down in the circular. No method of judging merit can appropriately be made part of the Rules as by its very nature it has to leave a wide discretion in the Committee, whereas the rule has to be more rigid. Only administrative instructions of the nature contained in the circular can be free from rigidity. This system of marking has been in vogue since 1960 and despite the fact that the circulars on the subject are marked confidentially their contents are well known to the officers. The contents of this writ petition show that the petitioner was fully aware of them. The circular lays much greater emphasis on the record of an officer for the last 5 years than it does on his record previous to the last 5 years. That in our opinion is very reasonable. An officer whose work has been unsatisfactory in the past should get a chance of improving and if he improves and becomes an efficient officer there is no reason to withhold promotion from him when he remained moderately efficient during the last 5 years before promotion.

21. The learned Single Judge held that the D. P. C. was not a quasi-judicial body and it was open to the Government to issue administrative instructions to it provided they did not impinge on the statutory rules. He quoted the following observations of their Lordships of the Supreme Court in *Sant Ram v. State of Rajasthan*,<sup>1</sup>

"It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

22. The learned Single Judge however found the circular to be defective in some

respects. He has stated that the circular would apply not only to the first selection, but also to future selections and he has considered whether the circular would be workable for future selections. He says that an officer who has rendered less than 5 years service will not be able to get a single mark out of 50 on the basis of the record for the period preceding 5 years as he will have no such record. It appears to us that the circular was issued by the Government on a very fair and reasonable expectation that there would be no likelihood of future selections of officers with less than 6 years' service being considered for promotion and there is no adequate basis for the theoretical assumption with reference to which the circular could be considered to be defective.

23. In the present selection there were 44 vacancies because 14 posts were increased in the selection grade and 26 in the senior grade. The Rules provide for filling up vacancies annually. In future years vacancies are likely to be filled as and when they arise. These vacancies will normally be due to retirements and they are not likely to exceed 9 or 10 in any one year and the number of officers who will be considered will be about 100 and no officer with less than six years' service in the R. A. S. will be senior enough to be considered for promotion. All these officers will have a past record of at least one year on which they will be able to get about 50 marks. In case the number of vacancies at any one recruitment is abnormally high the Government can reimpose a similar proviso in the rule.

24. The learned Single Judge has also examined the position with regard to the first selection. He says that an average officer who has just one year's record of his service has much more chances of getting all the 50 marks whereas another average officer with longer service will suffer the handicap of having more marks deducted if over a much longer period he has got an adverse entry or two in his character roll. This criticism is based on a misreading of the circular. No mark is to be deducted for an adverse entry so far as the previous record is concerned. Upto 2 marks can be deducted for each punishment according to the gravity. No deduction is to be made for mere warning. Officers who are likely to get 65 marks or more are not likely to have received any punishment. This criticism based on a hypothetical case, which is not likely to occur in actual practice, is not justified in our opinion.

25. The learned Single Judge has also observed that he was not able to follow the rationale behind the provision that while assessing the work during the last 5 years an officer gets a credit of 1 mark for an adverse entry with punishment; he gets a

deduction upto 2 marks for each punishment in his previous record. In our opinion there is no inconsistency. The method of giving marks for the last 5 years is different from the method of giving marks on the previous record. In the case of the last 5 years marks are given for each year upto 5. If there is an adverse entry with punishment in that year the officer gets 1 mark only. That means that out of the 5 marks allotted to that year 4 marks are deducted for the adverse entry with punishment. In the case of previous record 50 marks are allotted first and then deductions are made out of them. If there is an adverse entry with punishment then marks upto 2 are deducted for such an entry. As we have already said above, greater importance is attached to the record of the last 5 years and less importance to the record of the remaining years. The system of marking is thus quite sound and there is no inconsistency in it.

26. The learned Single Judge held that para 5 of the circular is repugnant to the Rules. This finding is couched in the following words :-

"Ensuring of objectivity of approach on the part of an administrative body, be it the selection body, is a very desirable thing, but the way in which it is desired to be achieved by para 5 of the circular has brought about a situation where a selection committee is left to ignore the clear mandate of the rule. It is better if a reasonable criterion or a marking system is embodied in the statutory rules themselves so that the candidates concerned may know in advance how their fate will be judged. But, as the matter stands, I am unable to hold that the instructions contained in para 5 of the circular are in keeping with the letter and spirit of rule 28B or rule 32 of the Rules. Indeed these instructions are repugnant to the Rules and cannot be allowed to stand."

27. We are unable to agree with the above opinion. We think that the circular provides a fair and reasonable method for assessing the merit of the officers. It brings about uniformity in the procedure for assessment of merit by different departmental promotion committees and ensures objectivity of approach on their part.

28. The term "merit" is not capable of being defined precisely. But every one knows what it means. In Rule 27(2), which was deleted on 15-12-65, it was provided that regard shall be had to –

(a) Personality and character;

- (b) tact and energy (including ability to undertake extensive tours);
- (c) intelligence and ability to express themselves in English and Hindi clearly;
- (d) court and other work;
- (e) integrity, and
- (f) previous record of service.

According to the learned counsel for the petitioner "merit" is a sum total of good qualities and attributes of an employee, such as, his academic qualifications, his University distinction, his seniority, character, his devotion to duty and his readiness to do everything to suffer all discomfort for the purpose of his duty with a view to achieve the target, his punctuality, amount of work performed and the tours undertaken in a financial year, command over language and expression, courtesy, and sweet reasonableness in dealing with the people, a rational and logical outlook, a broad vision, spirit of adaptation in adverse circumstances, honesty and integrity, co-operation with seniors and obedience to their orders, affectionate co-operation with the juniors and encouraging them to improve the quantity and quality of the work and so many other factors.

In our opinion all the qualities of an employee which lead to a more efficient performance of his duties are elements of merit. Most of the members of the D. P. C. can possibly have no personal knowledge of the qualities of an officer and the only record of such qualities is provided by his character roll. The D.P.C. has therefore naturally to base their selection on the entries in the character rolls of the officer. Detailed instructions regarding recording annual confidential reports are contained in Appointments (A) Department's Circular No. D. 2416/59/ F. 20(9) Appts. (A)/57 dated 28-7-59. which has been amended from time to time. The annual confidential reports are written in Form 'A' which contains the following columns :

1. Name of officer Date of Birth.
2. Appointment held during the year (with dates) and pay and scale of pay.
3. General qualifications and aptitude for Post held including any special or technical and professional attainments.
4. Manner in which the officer discharged his duties during the year, i.e., if satisfactory or otherwise (specific instances of unsatisfactory work if adversely commented on to be cited with number and date of orders passed).
5. How do you rate the officer regarding the following matters ? (Mention whether "Outstanding" "very good". "Good". "Average" or "Poor" etc.)

- (a) Patience.
- (b) Tact.
- (c) Courtesy.
- (d) Impartiality in his relations with the public, and subordinate or superior staff with whom he comes in contact.
- (e) Personal character.
- (f) Constitution.
- (g) Physical energy.
- (h) Mental alertness.
- (i) Initiative and drive.
- (j) Powers of control.
- (k) Powers of application.

6. Has the officer any special characteristics and/or any outstanding merits or abilities which would justify his advancement and special selection for higher appointment in the service ?

7.(a) Does the officer under report tour adequately ?

(b) Does he maintain adequate touch with and control over his subordinates or does he leave work unduly in their hands ?

(c) Is he in touch with the general public in the area under his charge ?

Note :- Government attaches great importance to touring and, therefore, the number of days and nights prescribed for touring and those actually spent on tour should be mentioned against item 7 (a).

8. General remarks :-

(The report should comment generally on the way in which the officer has carried out his various duties during the year and should give an estimate of his personality, character and abilities making particular mention of his relations with his fellow officers and the general public and in the case of an Officer of Police Department his faculty for supervising investigations and prosecutions. It should contain an opinion on any point specially required at any time, e.g., fitness to cross the efficiency bar and in the case of technical departments, should notice professional qualifications and ability.

It should also give factual information regarding disposal of case work (in the case of Magistrate, S. D. O., etc.) and number of inspections made by the officer).

Date -----

Signature and Designation of Reporting Officer

Opinion of Head of Department (when not reporting officer) on conduct and efficiency of the officer reported on.

Date -----

Signature and Designation of Head of Department.

#### INTEGRITY CERTIFICATE

(Note :- If it is intended to withhold Integrity Certificate, the Drawing/Countersigning Authorities should follow procedure laid down in Memorandum No. F. 20(9) Appts.

(A) 57, dated the 28th July, 1959.)

Nothing has come to my knowledge which casts any reflection on the integrity of Shri ----- . His general reputation for honesty is good and I certify his integrity.

Date -----

Signature and Designation of Reporting Officer.

Note :- In the case of all Assistant Collectors and Magistrates, separate remarks shall be recorded by the Collector and District Magistrate regarding the officer's knowledge of law and procedure and his disposal of cases both criminal and revenue. Opinion of District and Sessions Judge regarding criminal case work shall be obtained by the Collector and attached to this report."

We are of the opinion that the merit of an officer can be fairly judged on the basis of the entries in his character roll.

29. All the departmental promotion committees for selection to senior posts in State Services have as their Chairman, the Chairman or member of the Rajasthan Public Service Commission. If they felt that the system of marking, which has been in vogue since 1960, prevented them in any way from exercising their independent judgment in assessing the merit of the officers whose promotion they consider they would have certainly brought this to the notice of the Government. The other members of the D. P. C. in the case of selection to senior posts in the R. A. S. are the Chairman, Board of Revenue, the Commissioner, Development Department and the Special Secretary to Government in the Appointments Department. They are also high officers of Government, who would have similarly brought to its notice that the circular was a fetter which prevented them from selecting the most meritorious officers. In such a

case Government would have certainly withdrawn the circular. We can therefore safely infer that the departmental promotion committees which have been making selections for senior posts in the State Services in Rajasthan since 1960 have always considered that the system of marking prescribed in the circular is a fair and reasonable method of assessing the merit of officers and that they have never considered it to be an imposition which fetters the exercise of their reasonable discretion

30. We accordingly hold that the circular dated 27-8-66 is in no way repugnant to the Rules.

31. The learned Single Judge also held that sub-rule (2) of Rule 28-B, which has been applied to the selection for senior posts in the R. A. S. is void under Articles 14 and 16 of the Constitution as it restricts the field of selection on the basis of merit by excluding those who have not put in 6 years' service and confining the selection to senior most officers not exceeding 10 times the number of total vacancies to be filled in. In this also we differ from the learned Single Judge.

32. Restricting the eligibility to officers who have put in at least 6 years' service in the R. A. S. is in our opinion very reasonable. Before an officer in the Junior Scale can be considered as fit for promotion to the Senior Scale it is necessary that he should have worked on posts in the R. A. S. for some minimum period. The proper minimum period has been considered by the Government to be 6 years. We are unable to hold that this is in any way unreasonable.

33. Further the provision confining the field of selection to the senior most officers in the Junior Scale not exceeding 10 times the total number of vacancies is also reasonable in our opinion. In order to provide an incentive to the officers to increase their efficiency it is necessary to give quicker promotion to those who are comparatively more efficient than the average officer. At the same time if there are too many super sessions those who are superseded become discontented and frustrated. A balance has to be struck, so that while maintaining the morale of the service as a whole members are encouraged to increase their efficiency in the hope of getting quicker promotion. The rule-making authority has considered that best results will be achieved by limiting the selection to the senior most officers not exceeding 10 times the number of total vacancies and we are unable to hold that this is in any way

unreasonable.

34. We accordingly hold that no part of Rule 32 or of Rule 28-B is void under Article 14 or 16 of the Constitution.

35. This disposes of all the reasons given by the learned Single Judge in support of his judgment

36. Now we proceed to consider the arguments which were advanced before us on behalf of the petitioner.

37. It was contended that Rule 32(2) read with Rule 28-B (2) are void under Articles 14 and 16 of the Constitution as merit was not defined and the criteria for judging it was not laid down and this amounts to giving unhampered and arbitrary power to the D. P. C. In the alternative it was argued that the discretion of the Committee was fettered by the circular. The learned Single Judge has rejected the first argument and we agree with the reasons given by him for doing so.

38. The learned Single Judge accepted the second contention and we have given reasons for disagreeing with him. The learned Single Judge held that the D. P. C. was not a quasi-judicial body. On behalf of the petitioner it was contended that it is a quasi-judicial body. Numerous decisions were cited, which in our opinion have no application to a departmental promotion committee considering the cases of officers for promotion. Our attention was drawn to *Shankarlal v. Shankarlal*,<sup>2</sup> in which it was held –

"No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial."

39. In the same decision it was observed that it is not possible to formulate a definition which would satisfactorily distinguish between an administrative and a judicial order. In no case which was cited before us it was held that a body like the D. P. C. is bound to act quasi-judicially.

40. In *A. K. Kraipak v. Union of India*.<sup>3</sup> it was contended before their Lordships of the

Supreme Court that the Board of selection of officers of Forest Department to the Indian Forest Service was bound to act quasi-judicially. Their Lordships did not hold that it was bound to act quasi-judicially. They observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. But for the purpose of the case before them they assumed that the power exercised by the Selection Board was an administrative power. We are of the opinion that the power exercised by the D. P. C. in the present case was an administrative power and not a quasi-judicial power.

41. The decision in *B. Rajagopala v. S. T. A. Tribunal*,<sup>4</sup> is not applicable to the present case. The State Transport Authority was undoubtedly a quasi-judicial tribunal and its proceedings were therefore held to be vitiated because the Government had issued a circular which they had followed and in which it was laid down how the claims of rival bus operators should be decided.

42. Another argument which was advanced on behalf of the petitioner was that the circular was unauthorized as it was not issued under the authority of the Government, but was issued by the Chief Secretary on his own authority. The reply filed by the State was in the following words :-

"The Circular dated the 27th August, 1966 was issued by the Chief Secretary in his administrative capacity being the Head of the Services in the State. It is within his competence to give guidance for the proper working of any governmental machinery. The circular is not intended to be a piece of legislation nor it is any order of the Government.

It is erroneous to think that the circular was not issued by the Government. The Chief Secretary by virtue of his office is invested with the powers to act on behalf of the Government. It is erroneous to think that it is a departmental circular. The Chief Secretary is also the Secretary to Government in the Appointments Department. There is also a Special Secretary in the Appointments Department to assist the Chief Secretary in the performance of his duties in that Department. No further answer is necessary to the submission made by the petitioner in the second part of the sub-para of para (c)."

43. At the hearing the learned Advocate General contended that the circular was issued under the authority of Government and produced the file of the Cabinet before

us in support of his contention. We thereupon asked him to move an application for the amendment of the written statement and to file an affidavit in support of it. This application and affidavit were filed by him on 15-1-1970. On 16-1-1970 he filed another application in which he stated that some typing errors had crept in in the earlier application as well as in the annexures attached to it and sought leave to correct them. On perusing the applications and the annexures filed with them we discovered that whereas on 15-1-70 he filed a circular dated 15-12-65 as appendix 'C' with the second application dated 16-1-70 he filed quite a different circular dated 14-12-65 as appendix 'C'. That was not a case of typing mistake. When he asked the learned Advocate General to explain this he said that another mistake had been committed and that by inadvertence a copy of draft circular which was never issued had been filed as appendix 'C' along with the application dated 15-12-70. We then asked him to file another application with an affidavit to explain the mistake. We then rose for lunch and when we assembled again the learned Advocate General filed another application. That too did not explain the mistake in words and we suggested to him to amend the application and told him what he should incorporate in it. We then examined the Cabinet file along with the note sheets and satisfied ourselves that what was stated by the Officer-in-Charge in his affidavit was correct. The circular letter purporting to bear the date 15-12-65 was only a draft prepared by the Chief Secretary in October 1965, but it was never issued because the Cabinet did not approve it. We also satisfied ourselves that the circular dated 27-8-66 was issued with the approval of the Government. The learned counsel for the petitioner asked for permission to cross-examine the Officer-in-Charge on his affidavits. In view of the fact that we had ourselves examined the Cabinet file we considered it unnecessary to allow cross-examination and we allowed the amendment.

44. We accordingly hold that the circular dated 27-8-66 was issued under the authority of the Government.

45. Another argument which was advanced was that some brilliant officers who were senior to some of the officers selected under the merit quota were excluded from consideration as they had not put in 6 years' service in the R. A. S. We have already held above that it was reasonable on the part of the Government to restrict promotion to the Senior Scale to officers who had put in at least 6 years' service in the Junior Scale. Officers who were recruited by the emergency recruitment in 1957 were given seniority on ad hoc basis. They were drawn from subordinate services under the State

as well as from Private Services. Advance seniority was given to them on the basis of their age and on the basis of salary drawn by them in private service. Their seniority was not acquired by serving in the Junior Scale of R. A. S. for a longer period.

46. Another argument on behalf of the petitioner was that confidential reports were not written with a sense of responsibility as appears from the instructions issued by the Government from time to time on the subject. We are of the opinion that from these instructions it cannot be inferred that confidential reports are generally written without a sense of responsibility. There were no doubt some cases in which Government found that they had been written carelessly. Satisfactory results can only be achieved if those who are charged with the duty of writing character rolls and counter-signing them, as well as those, who are charged with the duty of making selections, act honestly with reasonable care and the presumption is that they do so.

47. Another contention on behalf of the petitioner is that an adverse report was given to him for the year 1965-66 in the month of September 1966, which was considered by the Committee against him, but which was not communicated to him and he was not given any opportunity to make a representation against it and there was thus a violation of the principle of natural justice.

48. He has filed a letter (annexure 4) purporting to have been written to him by Shri Pratap Singh, Deputy Commissioner, Excise, Bikaner, on 28-4-66 which runs as follows :-

"The Revenue Target fixed by the Excise Commissioner Rajasthan, Udaipur for the year 1965-66 for your area was Rs. 1,15,00,000.00 and actual revenue on the basis of figures furnished, was Rs. 1,19,54,095.00 in the year ending with 31st March 1966.

I gratefully write to record my appreciation for the best co-operation, hard and good work done during the year by you and your staff, without which this success could not have been possible in the difficulties we faced in the year under report.

I am proud of you and your annual achievements. I hope, that you and your staff will continue to work like this in the future as well".

49. Sri Pratap Singh was the immediate superior officer to the petitioner. He recorded

the annual remarks about him in September 1966 and the following remarks were communicated to him under letter dated 11th May 1967 after the selections had been made by the D. P. C. :-

- "(1) Performance has not been of the requisite standard.
- (2) He should improve his relationship with his subordinate and the public.
- (3) He is not fit for promotion to any higher post at present as nothing outstanding in his work has come to notice."

The allegation made by the petitioner in para (28-D) is that Sri Pratap Singh was made to prepare the above adverse confidential roll against the petitioner in September 1966. Sri Pratap Singh was not impleaded as a party. The Government were not in a position to explain why Sri Pratap Singh sent letter, annexure 4, to the petitioner if he was not satisfied with his work during the year 1965-66. In the absence of any allegation as to who compelled Shri Pratap Singh to give an adverse report against the petitioner the Government were not in a position to give a reply to this allegation. In the circumstances we can only infer that letter annexure 4 dated 28-4-66 was issued in the routine course at the end of the financial year. But Shri Pratap Singh made the entry in the character roll, which is confidential, giving his considered opinion about the work and conduct of the petitioner. It may also be that some facts about the work and conduct of the petitioner which were not within the knowledge of Shri Pratap Singh, when he wrote letter dated 28-4-66 came to his knowledge subsequently which made him change his opinion radically about the work and conduct of the officers.

50. Coming now to the question as to whether or not the proceedings of the D. P. C. were vitiated because the adverse remarks were not communicated to the petitioner before the meeting of the Selection Committee, we are of the view that the petitioner had no means of knowing whether or not the Committee gave him 1½ marks only for the year 1965-66 on the basis of these adverse remarks, which were not communicated to him. The Committee alone was in a position to say how it dealt with the case of the petitioner.

51. It is the case of the petitioner that the Committee followed the circular dated 27-8-66. That circular provides that if an adverse entry has not been communicated to an officer and his representation against it has not been decided then the Committee should communicate the remark to him and call him for interview so that he may have

an opportunity of explaining the circumstances in which the adverse remark was made. The allegation of the petitioner is that he was not confronted with the adverse entry by the Committee. The Committee was not impleaded as a party. It alone could have explained how it gave marks to the petitioner on his character roll for 1965-66. A reading of the whole circular shows that the Committee could have left out of consideration his report for the year 1965-66 and could have taken into consideration his report for an earlier year, so as to make up 5 years the confidential rolls of which were to be marked at the rate of 5 marks per year. There is a specific provision for it in case of an officer whose character roll for a particular year is missing or an officer who has gone abroad for study or training. The same provision could have been applied and might have been applied to the case of the petitioner. As the Committee was not impleaded as a party to the writ petition we are unable to find out what actually happened and are unable to hold that the proceedings of the D. P. C. were vitiated.

52. Lastly we come to the allegation of mala fides made by the petitioner. He has alleged that the Rules and circulars were made mala fide at the instance of the Ministers and the former Chief Secretary to favour their favourites and relatives, that the vacancies in 1963-64, 1964-65 and 1965-66 were allowed to accumulate and a provision was made in the Rules that officers numbering ten times the number of vacancies to be filled both on the basis of seniority-cum-merit and merit should be considered, and that only 15 persons were to be recruited on the basis of merit and only 150 could have been considered and if this had been done then most of the persons who were selected on merit would not have been promoted.

53. The petitioner has failed to produce material from which any inference of mala fides could be drawn. The only specific facts alleged in the petition are that Shri Gopeshwar Bhatt is the sister's son of the then Home Minister, that Shri Munna Lal Goyal is the son-in-law of the Chief Minister, and Shri Devendra Singh Saktawat is the son of the former Deputy Speaker. There is no material or circumstance to show that the change in the Rules was made to benefit these persons. These are 3 out of the 15 persons who were selected on the basis of merit. Out of these 3 officers Sarvashri Gopeshwar Bhatt and Shri Munna Lal Goyal are direct recruits who were recruited in 1955 and 1956 respectively as a result of the competitive examinations held by the P. S. C.

54. The allegation against Shri Lakshmi Chand Gupta, Shri Amar Chand Bapna, Shri Arjun Raj Bhandari, Shri S. C. Pagoria and Shri Prithvi Singh that they were favourites of the former Chief Secretary or the Chief Minister is very vague. Shri Lakshmi Chand Gupta and Shri S. C. Pagoria are both direct recruits. They were recruited in 1955 and 1956 respectively as a result of the competitive examinations held by the P. S. C. An efficient officer can also be a favorite of his superior officer or a Minister. No inference of incompetence can be drawn from the fact that he is such a favorite.

55. The allegation that most of the persons who were selected under the merit quota would not have been there if only 150 persons had been considered for promotion is also not wholly true. The senior most person selected on the basis of a seniority-cum-merit was at No. 71 in the seniority list. If only 150 persons had been considered for promotion officers upto 220 would have been considered and 11 out of the persons selected on merit would have been taken.

56. We accordingly hold that the allegation of mala fides is baseless.

57. In the result the special appeal is allowed and the order of the learned Single Judge is set aside. We hold that Rules 32 and 28-B are valid and no part of the circular dated 27th August 1966 is repugnant to them. We also hold that the selection of Sarvashri R. D. Mathur, S. C. Pagoria, Munna Lal Goyal and Prithvi Singh is valid to the Senior Scale of R. A. S.

58. We leave the parties to bear their own costs of this special appeal.

Appeal allowed.

Cases Referred.

1. AIR 1967 SC 1910
2. AIR 1965 SC 507
3. 1969 Serv LR 445: (AIR 1970 SC 150)
4. AIR 1964 SC 1573