

A REFERENCE CASE NO. 1 OF 1995 REFERENCE UNDER
ARTICLE 317(1) OF THE CONSTITUTION OF INDIA
REGARDING ENQUIRY AND REPORT ON
ALLEGATION AGAINST SHRI SHER SINGH,
MEMBER, HARYANA PUBLIC SERVICE COMMISSION

B JANUARY 29, 1997

[A.M. AHMADI, C.J. AND SUJATA V. MANOHAR, J.]

Constitution of India, 1950 : Article 317(1) : Member, Public Service

C *Commission—Removal of—Ground—Misbehaviour—Member attempted to influence result of candidate who appeared in an examination conducted by Commission—Held: Presidential reference answered in the affirmative that conduct of the said Member amounted to misbehaviour—Hence, it warranted removal of the said Member from Commission.*

D *Practice and Procedure:*

Member, Public Service Commission—Procedure for removal of—Evidence—Examination of—Held : Affidavits filed in Supreme Court treated as examination-in-chief and sitting Judge of High Court deputed to record cross—Examination affidavits and cross—Examination considered while appreciating evidence.

F The President of India made a reference to this Court under Article 317(1) of the Constitution as to whether SS, Member, Public Service Commission, "ought, on the ground of misbehaviour, be removed from the office of the Member of the Commission".

G The allegation against SS was that he attempted to influence the Commission for obtaining favors for his nephew who was a candidate for the Civil Service (Executive Branch) Examination. During the days of the written examination, SS had been bothering the Chairman at his residence almost daily for some help to his nephew. The Chairman told SS that he could not think of any way of helping out his candidate in the written examination. SS had the audacity to suggest change of papers by speaking to the Secretary of the Commission who kept the sealed papers after their receipt or by manipulation of the fictitious roll numbers of the candidate

H securing high marks. The Chairman refused and told SS that no

manipulation of any type at any time would be allowed to be done by anybody for any candidate. This made SS unhappy and vindictive. SS had also thrown hints to the Secretary to this effect but he too refused to oblige him in any manner. The Chairman in his resignation letter made the above allegations.

The Governor of the State asked for the comments of SS to the Chairman's allegations. SS made counter-allegations that the Chairman and the Secretary committed procedural irregularities in conducting the examination. The Secretary did not keep the "key" (the document-containing clue to decoding of fictitious roll numbers into original roll numbers) in a sealed cover and kept the "key" in a double lock. The Secretary was transferred for this lapse and the new Secretary proceeded to compile the results. Further, the Chairman and the new Secretary opened the seal of the award list instead of opening it in presence of the two Members of the Commission who had signed the seal. SS also alleged that the Chairman acted at the instance of the then Chief Minister who wanted to remove him and appoint some other person of his own choice.

In view of the damage caused to the working of the Commission, the Chairman scrapped the examination after discussing the matter in the Commission's meeting. The Chairman, the then Secretary and SS were directed to file affidavits in this Court. A sitting judge of the High Court was deputed to record cross-examination to each affidavit by the other parties. The enquiry before this Court was limited to the conduct of SS and whether he was guilty of misbehaviour.

Answering the reference in the affirmative, this Court

HELD : 1.1. The secrecy of the entire proceedings being so important, it would have been desirable if SS, instead of taking such keen interest in the whole affair, had shown aloofness and had kept himself away from handing of either the key or the award list. [670-D-E]

1.2. The testimony of the then Secretary of the Public Service Commission is of much weight as he is an independent witness. After the key was sealed and signed by the Members in addition to the Secretary, the Secretary was transferred and the new Secretary compiled the results. For the irregularities committed thereafter the Chairman himself has assumed the entire responsibility stating he had directed the Secretary to

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- A open the award list without the presence of the Members and had later opened the key for compilation of records. The then Secretary's conduct was not directly in question and, therefore, he has no reason to fear any action being taken against him. The then Secretary's assertion that all the hue and cry about the secrecy being broken raised by SS was an attempt to assure access to the records with a view to influence the result of his nephew cannot be lightly brushed aside. [670-F-G]

- 1.3. Although there was a procedural irregularity in not keeping the "key" in a sealed cover yet proper precaution was taken against falling of the "key" into undesirable hands. there was a valid explanation for the
- C Chairman's unilateral decision of opening the seal of award list without the presence of other Members of the Commission. [666-C-D]

- 2.1. The Chairman had testified in his cross-examination that the Members were keen to know the marks secured by different candidates so that they could help their favourites. Apart from SS, another Member's relative was also appearing in the examination. As to why he did not complain against SS till the day he resigned, the Chairman has explained that he initially made efforts to save the examination and the Commission's image and for that reason was keen to carry all the Members with him. He, therefore, did not want to vitiate the atmosphere by making any complaint. There is nothing in his cross-examination, which can destroy his testimony in the affidavit. [671-A-B]
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- 2.2. SS repeatedly denied that he ever made any approach to the Chairman to influence the result of his nephew. He, however, admitted that he never formally declared to the Commission that his nephew was appearing in the examination. Nor did he ever disassociate himself from the said examination. His allegation that the Chairman had worked at the instance of the then Chief Minister has not been substantiated. [671-C]
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- 2.3. The affidavits filed in this Court were treated as examination-in-chief and cross-examination to each affidavit by the other parties filing the affidavits was allowed. A sitting Judge of the High Court was deputed to record the cross-examination. These affidavits and the cross-examination were taken into consideration while appreciating the evidence. The entire evidence on record suggests that SS had some axe to grind. The testimony of the Chairman and the then Secretary that SS wanted to influence the result of his nephew read with all the other evidence on
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record goes to prove that SS did approach the Chairman for favours for his nephew. The allegation made against SS is, therefore, held to be proved.

[663-B, 671-D] A

ORIGINAL JURISDICTION : Reference Case No. 1 of 1995.

Under Article 317 (1) of the Constitution of India. B

A.H. Desai, Attorney General of India, P.P. Rao, Mahabir Singh, Prem Malhotra, B.S. Chahar, D.B. Vohra, Ranjit Kumar, Ms. Anu Mohla, Pallav Shishodia, P. Parmeswaran, for the appearing parties.

The Judgment of the Court was delivered : C

AHMADI, CJ. This is a reference from the President of India for enquiry and report as to whether Shri Sher Singh, Member of Haryana Public Service Commission (hereinafter referred to as "the Commission"), ought, on the ground of misbehaviour, be removed from the office of the Member of the Commission. D

The Commission held a written examination from 2.10.1993 to 15.10.1993 for recruitment to 62 posts for different services under the Government of Haryana including 12 posts in the Haryana Civil Service (Executive Branch) (hereinafter referred to as "the said examination"). However, before the results were declared, some difference arose between the Members of the Commission and certain irregularities in keeping the records of the examination were alleged. This led to scrapping of the said examination followed by the resignation of the Chairman Shri L.D. Kataria from the Commission. The resignation letter submitted to Shri Dhanik Lal Mandal, Governor of Haryana, disclosed the allegations of facts leading to his resignation. The facts alleged by him can be narrated in brief as under : E

The Secretary of the Commission was responsible for maintaining secrecy with regard to the entire process of examination and interview so as to ensure objective and impartial selection of candidates. Neither the Chairman nor the Members were expected to know the results of any individual candidate in the written examination. The examiners were to be selected by the Secretary in consultation with the Chairman and the Secretary had to maintain complete secrecy about the same. The papers sent for marking and received back from the examiners, were handled by the Secretary under the orders of the Chairman. The marking is done on F G H

- A the basis of fictitious roll numbers (code numbers) given to each answer sheet after tearing out the original roll numbers called the clippings. The key i.e. the document containing clue to decoding the fictitious roll numbers, is drawn up by the Secretary and kept under sealed cover by him. The results are compiled on the basis of the fictitious roll numbers and later the key is opened in the presence of the Chairman at the time the
- B results are to be finally compiled and declared. Thereafter, all relevant papers including the key are sealed and kept till the interviews are over and results are finally declared. In the said examination, Shri T.R. Tuli, former Secretary, exhibited carelessness by not sealing the key containing the original and fictitious roll numbers in time and when on 29th December, 1995 the Members of the Commission wanted to see the key for ensuring its secrecy, the Secretary brought the key in his brief-case which he claimed was kept in double lock but not sealed. The Secretary was reprimanded for the lapse. The key was sealed and signed by the two Members in addition to the Secretary. The Secretary Shri T.R. Tuli was transferred and the new Secretary took over and proceeded to compile the
- D result. The Members thereafter wanted to see certain records including the secret document on 21st June, 1994. The secretary on that day was on leave. On 22nd June, 1994, the news item in local Tribune was published under the caption "No confidence in HPSC Chief". In order to clarify the matter, the Chairman discussed the matter with the Members and convened a
- E Press Conference on 23.6.1994. During the Press Conference, although the Chairman emphasised that the said examination was not void and that all allegations would be looked into before the result was finally declared, Shri Sher Singh, Member of the Commission, vociferously repeated the allegations regarding non-sealing of key as also the clippings and reiterated that the said examination needs to be held void. The controversy had been
- F blown out of all proportions leading to erosion of the image of the Commission. The Chairman had defended the position of the Commission because the omission to seal the key was a technical lapse. However, in view of the damage caused to the working of the Commission, the Chairman scrapped the examination held in October, 1993 after discussing the matter in the Commission's Meeting on 24.6.1994. The nephew of Shri Sher Singh was appearing as a candidate in the said examination. During this time, he had been bothering the Chairman for some help to the nephew and even suggested that the fictitious roll numbers could be manipulated for securing high marks for the nephew. Such requests had also been made by him to the former secretary. Shri Sher Singh as well as some other
- H Members of the Commission in view of their vested and selfish interest

resorted to maligning the office of the Chairman and damaging the image A of the Commission. Hence the resignation.

The Governor of Haryana, Shri Dhanik Lal Mandal, on receipt of the resignation letter asked for the comments from Shri Sher Singh. Shri Sher Singh contended in reply that both the award list and the key were brought by the Secretary in a brief-case which were unsealed although the Secretary claimed that they had been kept in double lock, that as Members objected to the sorry state of affairs which led to a heated discussion, that the Secretary was reprimanded and thereafter the award list as well as the key were sealed under the signature of two Members and the Secretary but it transpired that the seal on the award list was subsequently broken, that when this was pointed out, the Chairman in his note dated 21.6.1994 admitted that he had asked the Secretary to open the seal of the award list for compilation of the result, that the seal should have been broken only in presence of the Members who had countersigned the award list, that the Members, were of the view that the Chairman in connivance with the Secretary had played some mischief as the Chairman had declined to make available the records relating to the merit list and the result cards of the qualifying candidates on the pretext of secrecy being maintained even though these documents had been prepared on the fictitious roll numbers, that in the meeting dated 21.6.1994 the Members suggested that the examination held in October, 1993 be declared void, that the Chairman started finding fault with the Members as he could not manipulate the results, that a preliminary checking was demanded and during the preliminary checking, certain irregularities were found, that never before the resignation, the Chairman had made any mention that Sher Singh had been approaching him for favouring his nephew, and that Sher Singh never approached the Chairman for any favour.

Shri Sher Singh goes on to say that the whole thing was a conspiracy to seek resignation of all the members of the Commission and to appoint new ones. He says Shri I.D. Kaushik was forced to submit his resignation who subsequently filed a Civil Writ Petition before the High Court of Chandigarh for declaration that his resignation was void and for a direction that he be allowed to continue as a Member of the Commission. The High Court on 4.7.1994 ordered the sealing of the records.

The reference was made by the President of India vide his order H

A dated 18.3.1995 for an enquiry and report as to whether Shri Sher Singh, Member of the Commission, ought on the ground of misbehaviour be removed from the office of Member of the Commission.

Notice was issued to the former Chairman of the Commission, Shri L.D. Kataria and also to Shri T.R. Tuli, the then Secretary of the Commission. Shri L.D. Kataria and T.R. Tuli as well as Shri Sher Singh appeared before the Court. Shri Kataria and Shri Tuli were directed to file affidavit within two weeks, and Shri Sher Singh within one week thereafter. The affidavit of Shri L.D. Kataria refers to the comments given by Shri Sher Singh in response to the letter of resignation submitted by Shri Kataria.

C Shri Kataria reiterates the position explained in the letter of resignation but has some more information and comments to give. In the meantime, a large number of writ petitions were filed in the High Court of Punjab and Haryana concerning the examination of October 19, 1993. In one of the writ petitions being Civil Writ Petition No. 11525 of 1994, *Shiv Prasad v. Haryana Public Service Commission Etc.* Shri Kataria filed his written statement while Shri T.R. Tuli filed his affidavit. Both these documents are submitted as annexures to these affidavits. Commenting on the allegation that the award list and the key were unsealed, Shri Kataria says that on 29.12.1993, the award lists were not at all ready and, therefore, there could be no occasion of their being left non-sealed. About unsealing of the key, he stated that there was no serious infirmity in maintaining the secrecy of the examination and in the meeting dated 29.12.1993 that issue was closed although it was raised later by Shri Sher Singh because of some personal prejudice. On how the award list was later found unsealed, Shri Kataria says that because of the atmosphere of suspicion and hostility, it was decided that the Secretary should open the envelope received from the various examiners containing the marked answer sheets and award list and immediately thereafter the award list should be taken out and put in a sealed cover by his Secretary, the sealed cover being signed by two members. However, later Shri Tuli pointed out to Shri Kataria that in the process of opening the envelopes received from the examiners in the presence of the members, the members would get access to the names of the examiners and this may result in some complaints of violation of secrecy and in view of this possibility Shri Kataria directed the Secretary not to open the envelopes received from the examiners in the presence of the members or to get them resealed in their presence and further directed him to continue the old practice of dealing with the envelopes at the

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Secretary's level only. Further, at the time of compilation of the results of the said written examinations, the award lists were allowed by Shri Kataria to be opened by the Secretary. About the refusal to show the merit list and the result cards, it is contended by Shri Kataria that the results of the written examination should not be disclosed to the members on the interviewing committee because such information may influence the minds of the interviewers, and consequently, the evaluation of the candidates at the interview. However, he says, the members were granted access to the award list for the purpose of checking the correctness of the evaluation of the written papers. So far as the irregularities in evaluation of written papers detected by Shri Sher Singh are concerned, Shri Kataria has given some categorical answers. The irregularities were : (a) certain parts of some answer sheets had not been assessed; (b) the totalling done by the examiners in the award list did not tally with the actual marks awarded; and (c) some examiners gave credits to certain questions answered in excess of the number required to be answered by the candidates. All these mistakes and discrepancies were required to be corrected at the level of the Commission. The unassessed portions of the answer book could ordinarily be assessed by the original examiner but in view of the constraint of distance and time, such unassessed portion of the answer sheets were assessed by the locally available qualified examiners. Since, nearly 22,000 answer sheets were involved, such irregularities were natural. The evaluation of the unmarked portions naturally led to increase in the total marks and a corresponding correction became necessary in many other documents. Shri Kataria, further, says that he never publicly complained that Shri Sher Singh had approached him for showing some favour to his nephew because he did not want to tarnish the image of the Commission. Ultimately, when he decided to quit, he thought it proper to put all the facts on record.

Shri T.R. Tuli, the Secretary of the Commission, in his affidavit throws further light on the method of handling the answer sheets and preparation of the key. He explains that after the examination was over, the key of the fictitious roll numbers was drawn up by him and kept in his safe custody, that the work of replacing the original roll numbers with the fictitious roll numbers as per key was a voluminous task and was done over a period of nearly one month with the help of the Controller of Examinations, the Deputy Superintendent, a dealing Assistant and some peons under the Supervision of the Secretary and that during this period the key was kept by the Secretary. The clippings, he said, were kept in a sealed

- A cover in safe custody and the answer books remitted to the examiners. The key used to be kept in his safe custody in a box on which there were three locks in an almirah with two locks in the confidential room on which there were four locks. Initially the box was being locked by a Member and a co-Member who subsequently discontinued their involvement. The four locks could be opened by four persons jointly and not otherwise. According to the Secretary, this was enough to ensure secrecy of the key. So far as the secrecy of the award list was concerned, he says that the award lists were drawn on fictitious roll numbers and till the fictitious roll numbers were disclosed, it was not necessary to keep the award list under any seal. He makes a serious allegation against Shri Sher Singh, in that, he allured
- C him into selecting candidates known to him and in return suggested that his (Secretary's) candidates also could be cleared. He goes on to allege that Shri Sher Singh even attempted to intimidate him by sending one of his henchmen to his residence and on another occasion by telling him on phone that he had a visitor who knew certain roll numbers of some
- D candidates and the names of the examiners and the address of the security press where the question papers had been printed. On receipt of the answer books, Shri Tuli explained, a scrutiny was carried out by the Superintendent, the Controller of Examinations and the Secretary and corrections required were incorporated on the approval of the Chairman. He says that all unmarked portions were sent to the original examiners
- E although he could not testify about the procedure adopted after he was transferred out of the Commission.

Shri Sher Singh in his affidavit reiterates his stand taken in the comments to the resignation letter. He contends the allegations against him

- F were made at the instance of the then Chief Minister Shri Bhajan Lal who wanted to remove him and to appoint some other person of his own choice. He further narrates in detail how the Chief Minister demanded the resignation of some members of the Commission including himself and how they were threatened with dire consequences if his demand was not met. So far as sealing of the award list is concerned, he says that the same was also sealed in presence of the members on the very day the key was sealed. He also lays emphasis on the note dated 21.6.1994 in which it is *inter alia* recorded that the Chairman admits the seal on the award list to have been broken which had been sealed under the signature of two members. On that very day, as the note suggests, the members expressed lack of faith
- H and proposed that the examination in question be declared void. It is

further emphasised by Shri Sher Singh that the clippings remained unsealed and names of the examiners were also not kept secret. He avers that he can show how in particular cases the marks of the candidates were increased.

These affidavits were treated as examination-in-chief and cross-examination to each affidavit by the other parties filing the affidavits were allowed. A sitting Judge of the High Court of Punjab & Haryana to be nominated by the Chief Justice/Acting Chief Justice of the High Court was deputed to record the cross-examination. The cross-examinations were recorded by Shri Justice M.L Koul of the High Court of Punjab & Haryana.

Before we proceed to appreciate the evidence on record, it would be appropriate to recall the point in controversy. The reference of the President of India extracts a portion of Mr. Kataria's resignation letter wherein the allegation of misconduct by Shri Sher Singh is made. The Government of Haryana after having sought the comments of Shri Sher Singh, forwarded the resignation letter and the comments to the President. The President being satisfied that it was necessary so to do, made the reference under Article 317 of the Constitution. The order of reference is brief and is extracted below in its entirety:

"PRESIDENT
REPUBLIC OF INDIA

18th March, 1995.

That WHEREAS Shri L.D. Kataria, Chairman of Haryana Public Service Commission (here in after referred to as the Commission) had levelled the following charge against Shri Sher Singh, Member of the Commission in his resignation letter to the Governor of Haryana (a copy where of is set out in Annexure-I here to).

"A nephew (brother's son) of Shri Sher Singh, Member of the Commission was appearing as a candidate in this examination. Shri Sher Singh during the days of examination was almost daily bothering me at my residence for some help. I told him that I cannot think of any way of helping out his candidate in the written examination. He had the audacity to suggest change of papers by speaking to the Secretary who keeps sealed papers after their

A receipt or by manipulation the fictitious roll number of the candidate securing high marks. I refused him bluntly and told him that no manipulation of any type at any time will be allowed to be done by way of any body for any candidate. This made Mr. Sher Singh, Member unhappy and vindictive. As verbally told by former Secretary, Shri Sher Singh had thrown hints to this effect even to the former Secretary but in view of clear cut directions he too refused to oblige him in any manner."

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And WHEREAS the Government of Haryana sought the comments of Shri Sher Singh on the above charge leveled by Shri L.D. Kataria against him.

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And WHEREAS the Government of Haryana had forwarded to the Government of India a copy of Shri Kataria's letter containing the allegations against Shri Sher Singh and the reply of the said Shri Sher Singh thereto (a copy where of is set out in Annexure-II here to) and also the note of Shri T.R. Tully, the then Secretary of the Commission (a copy where of is set out in Annexure-III here to).

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And WHEREAS I am satisfied from the above referred material that it is necessary that the said allegation be enquired into.

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And THEREFORE in exercise of the powers conferred upon me by clause (1) of article 317 of the Constitution, I, Shanker Dayal Sharma, President of India, hereby refer to the Supreme Court of India for enquiry and report as to whether Shri Sher Singh, Member of the Commission, ought, on the ground of misbehaviour, be removed from the office of the Member of the Commission.

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PRESIDENT OF INDIA"

Thus, the enquiry demanded is limited to the conduct of Shri Sher Singh. Further, Shri Sher Singh's conduct to be enquired into is limited to the allegation extracted in the order of reference. The sum and substance of the allegation is that Shri Sher Singh attempted to influence the Commission for obtaining favours for his nephew who admittedly was a can-

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dicate for the said examination. The allegation is refuted by Shri Sher Singh. Further, Shri Sher Singh imputes a motive to Shri Kataria, namely, that the allegation was made at the behest of Shri Bhajan Lal, the then Chief Minister of Haryana who was vindictive towards him. Whether secrecy standards had been compromised or not and whether the said examination should have been declared void is not directly in issue. But, if it is shown that Shri Sher Singh had no good reason to question the manner in which the work was being done, it may indicate that his challenge to the manner of maintaining secrecy was actuated by oblique motives.

Shri L.D. Kataria swears an affidavit to substantiate his allegation. Shri T.R. Tuli, the then Secretary, also files an affidavit stating that Shri Sher Singh had suggested to him that the candidates favoured by him could be helped in exchange for similar help to be extended to the Secretary. Shri Tuli further goes to say that Shri Sher Singh did not stop by a mere suggestion or request but had attempted to intimidate him so that he may yield to him. The earliest point of time when the allegations were made in writing by Shri Tuli was 2.7.1994 in a note (Annexure-III to the Reference) in response to the news items in the press from 21.6.1993 onwards concerning the work of the commission relating to the said examination and its ultimate decision to scrap the same. His affidavit before this Court only affirms and verifies the contents of that note. The following part of his affidavit which is treated as examination-in-chief can be quoted below :

".....Shri Sher Singh also tried to allure me to get the selections of candidates made on reciprocal basis by his favourites or kith and kin with mine, if any, by inviting me at his residence and in his office room, which was a great surprise to me as earlier on many occasions, he has not been supporting me in the disposal of official business during discussions in the Commission's meetings, and has been critical on my actions in the discharge of my functions as Secretary of the Commission as per rules, and has been delaying cases with ulterior motives. The Chairman also told me that Shri Sher Singh visited him at his residence many a times and requested for his help in getting through his favourites and kith and kin in the written examination for HCS to which he did not agree. He flatly refused to oblige him in order to maintain fairness of the examination and restore the lost image and made up mind to do likewise by putting in hard labour without caring for day and night

A and holidays. When Shri Sher Singh did not get any help in his design, in the last week of December 1993, i.e., about 15 days or so after the work of dispatch of answer books of all the papers to the concerned examiners was over, Shri Sher Singh asked me in the meeting of the full commission as to where the 'Key' was kept.

B I told the Commission that the 'Key' was kept locked in the box which was got made by them for it and kept in my safe custody in the almirah with double locks lying in the confidential room with four locks to be opened jointly by Secretary, Controller of Examination, Superintendent and Assistant with separate four keys of the locks with them. What else can be the better arrangement for maintaining the secrecy than this? He asked me to bring before the Commission the 'Key' to see. The locked box was taken out of the almirah with double lock put in the confidential room with four locks and placed it before the Commission. When the box was opened and shown the 'Key', Shri Sher Singh along with some other Members, objected that the 'Key' should have been put in a sealed cover under my signatures and then placed in the box. I told them that the purpose of sealing the 'Key' would be served if it was put in a cover and sealed by the Commission under their signatures. The 'Key' was then put in a cover and sealed under the signatures of the full Commission, and is still lying unopened in the custody of my successor. In the meeting, Shri Sher Singh also started levelling vague and baseless allegations against me, which were vehemently denied and objected to. This seemed to be a pressure tactic not to have been obliged him as stated above. Then he got Shri Avtar Singh, Deputy Supdt. and Shri Prem Singh Thakur, dealing Assistant, who were doing the examination work till then, replaced by Shri Amrik Singh, Supdt., and Shri M.S. Dhankar, Assistant, who was near to Shri Sher Singh, and hurdle in the smooth working of the Secretary.

G Shri Sher Singh, Member, also tried to blackmail and intimidate me through one of his henchmen. First he rang up at my residence that somebody from Delhi had come to his place and told him that he knew the roll number of some of the candidates, the name of examiners and the Security Press from where the question papers were got printed, etc. I asked him that he should have enquired this information from that person so that the facts could have been

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ascertained and enquiry could have been made, but he failed to do so. He said that this information would be gathered from that person when he comes to meet him again. Then some person, (perhaps the same man he was referring to) rang up my son at my residence in H. No. 40, Sector 7, Chandigarh, and desired to see me to get help in the written examination of his sister and was told that he should see me in this regard in my office. That person then visited my private house No. 483, Sector 8, Panchkula, and then wanted to get inside the house uninvitedly and desired to talk to me with regard to the examination of his sister, which was objected to. When he was questioned loudly how he dared to come to my residence for this purpose, he ran away fearing apprehension. Shri Sher Singh next day called me in Sh. Uda Ram's office room and narrated the happening with him without divulging any concrete information for verification. It transpired that this story was concocted only to embarrass and harass me to tow in their line. I was told not to bring it to the notice of other Members, but fearing leakage, they themselves brought it to the notice of other Members of the Commission in the absence of Chairman. I informed the Chairman about this episode later."

In his cross-examination, it was suggested that this note was written much later at the instance of Shri Bhajan Lal. He denied the suggestion. He also denied that he had applied for extension of his service. He replied to questions in cross-examination that Shri Sher Singh first approached him for favour only in November, 1993 after the written examination was over. He also said that Shri Uda Ram was present when Sher Singh approached him for favours. No substantial questioning took place to assail the allegations of intimidations from Shri Sher Singh. Absolutely no question is put about the telephonic talk between the witness and Shri Sher Singh regarding leakage of information about the roll numbers, name of the press and the names of the examiner. No effort is made by Shri Sher Singh to produce any affidavit of Shri Uda Ram or to present him in the witness box.

Another important statement in examination-in-chief of Shri Tuli is that the Chairman also told him that Shri Sher Singh visited him at his residence many a times and requested for help in getting through his favourites and kith and kin. This may be evidence of Sher Singh's conduct. The Chairman had disclosed this fact to the secretary presumably when the

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A Secretary, i.e., Mr. Tuli was in office that is before the controversy was raked up. This evidence has not been challenged in the cross-examination at all.

B Before proceeding further to discuss the other cross-examinations, it would be appropriate to mention that nothing could be brought on record to establish that there was any undue attachment between Shri Tuli and Shri Kataria or that Shri Tuli was under any influence of the then Chief Minister.

C From the statement of Shri Kataria, it is clear that two irregularities had been committed. In the first place, after the key was sealed in the presence of the Members and the sealed envelope was signed by the Secretary and the other two Members, the key should not have been opened except in presence of those two signing Members because that was the only way to ensure that the key was not opened till it was required for compilation of results. The second thing which is not an irregularity but an act which offends the conscience is that after it was decided that the award list would be opened in presence of two Members and sealed thereafter in their presence, the Chairman and the Secretary subsequently changed this decision unilaterally as they feared that the Members in the process of opening the award list would come to know the names of the examiners.

D Apparently, there was an air of distrust between the Members on the one hand and the Chairman and the Secretary on the other. The Secretary who handled the key during the period when the fictitious roll numbers were being allotted and the clippings were being collected and when the answer-sheets were being dispatched had full access to the key of which he himself

E was the author and if he at all wanted to do any mischief with the key nobody could have stopped him from doing so. The Members did not make a complaint about the key not being sealed or opened in their presence on every day of such operation which lasted for nearly one month. It appears that only when the key was kept awaiting the results that the Members wanted to know whether the key was being kept in a sealed cover. The

F Secretary and the Chairman were both concerned about the secrecy of the examination and no Member of the Commission had been made responsible for this act. The Secretary kept the key in a box provided by the Members with three locks and only when all the three keeping the keys were present that the box could be opened. Further, precaution had been

G taken in keeping the box in an almirah with double lock which itself and

had been kept in a strong room with four locks. Here again, the four locks could be opened only when all the four persons with the keys were present. Thus, the Secretary could not have access to the key unless he could conspire with all the people with the keys to the various locks. There is no allegation that there was any such conspiracy. A

The past practice of the Commission was not to open and seal the award lists received from the examiners in the presence of the Members or under their signatures. When it was decided that the award lists would be opened and sealed in presence of Members, no formal order was drawn up. Perhaps, therefore, the Chairman thought it proper to ask the Secretary not to open the award list in presence of the Members for that could disclose the names of the examiners. Since the Secretary would have been personally responsible if any disclosure had taken place his anxiety in keeping the Members away from such information is understandable. The Chairman also was responsible for all confidential work. It was primarily the Chairman and the Secretary who were responsible for maintaining the secrecy and, therefore, thought it proper to go about the things themselves without involving the Members. Although we feel that the Chairman having already assured the Members that the award list would not be opened except in their presence, he should have maintained this position or at least should have informed the Members that he had instructed the Secretary otherwise. However, since there is no categorical proof that the Secretary or the Chairman tampered with the records or did anything unfair, it will not be fair to doubt their *bonafides*. It may be mentioned that Shri Sher Singh in his cross-examination has mentioned certain roll numbers on the answer-sheets whereof some increase in the marks were made. No notice of such information in the cross-examination can be taken because this information was not disclosed either in his own affidavit or in his comments. Nor did he put these roll numbers to the Chairman when the Chairman was in the witness box so that he could explain if any such increase in marks had been made. It can be recalled that it is in evidence that at times, there were mistakes by the examiners in leaving a part of the answer-sheets unmarked or in over-marking the answer-sheets which called for corrective steps and on such occasions corrections had been carried out. Shri Sher Singh says that it was the responsibility of the entire Commission and not of the Secretary or the Chairman to make the corrections. He, however, does not suggest that such corrections were required to be carried out by the entire Commission sitting together. The Secretary is the B C D E F G H

- A main functionary of the Commission and could do it under the directions of the Chairman. There is no allegation that such corrections carried out in any answer-sheet by the Secretary was vitiated for any reason. There is no allegation that these corrections were dishonest or made with a view to favouring any candidate.
- B Shri Sher Singh himself claims to have been the main Member in challenging the process of maintaining secrecy in the said examination. Shri Sher Singh's nephew had admittedly appeared in the said examination. He did not find it improper to take such keen interest regarding the conduct of the said examination although he admits he was excepted to excuse
- C himself had his nephew qualified in the written test and been invited for the interview.

- D Such competitive examinations, particularly for Civil Services, have always been contentious issues. Even on earlier occasion so far as Haryana Civil Services Examinations are concerned, there have been a good number of litigation with candidates challenging the examination results. This is borne out from the documents filed by the parties. The secrecy of the entire proceedings being so important, we would have been happy if Shri Sher Singh, instead of taking such keen interest in the whole affair, had shown aloofness and had kept himself away from handling of either the key or the award list.
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- F Shri Tuli's testimony is of much weight as he is an independent witness. After the key was sealed and signed by the Members in addition to the Secretary, on 29.12.1993, Shri Tuli himself was transferred. The results were compiled by the new Secretary who joined thereafter. For the irregularities after 29th December, 1995, the Chairman himself has assumed the entire responsibility stating he had directed the Secretary to open the award list without the presence of the Members and had later opened the key for compilation of records. Shri Tuli's conduct was not directly in question and, therefore, he has no reason to fear any action being taken against him. Shri Tuli's assertion that all the hue and cry about the secrecy being broken raised by Shri Sher Singh was an attempt to secure access to the records with a view to influence the result of his nephew cannot be lightly brushed aside.
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Coming to the cross-examination of Shri Kataria, we find a reiteration that the Members were keen to know the marks secured by different

candidates so that they could help their favourites. Apart from Shri Sher Singh, Member Mr. I.D. Kaushik's relative was also appearing in the examination. As to why he did not complain against Shri Sher Singh till the day he resigned, Shri Kataria says that he initially made efforts to save the examination and the Commission's image and for that reason was keen to carry all the Members with him. He, therefore, did not want to vitiate the atmosphere by making any complaint. There is nothing in his cross-examination which can destroy his testimony in the affidavit.

Shri Sher Singh repeatedly denies that he ever made any approach to the Chairman to influence the result of his nephew. He, however, admits that he never formally declared to the Commission that his nephew was appearing in the examination. Nor did he ever disassociate himself from the said examination. His allegation that Shri Kataria had worked at the instance of the then Chief Minister has not been substantiated.

The entire evidence on record suggests that Shri Sher Singh had some axe to grind. The testimony of Shri Kataria and Shri Tuli that Shri Sher Singh wanted to influence the result of his nephew read with all the other evidence on record goes to prove that Shri Sher Singh did approach Shri Kataria for favours for his nephew. The allegation made in the resignation letter and extracted in the order of reference is, therefore, held to be proved.

Before parting with the case, a reference can be made to the subsequent appointment of Shri Kataria as the Chairman of the Board of Horticulture. This Board is not under the Government of the State of Haryana. He was confronted with the question as to whether he could take up this assignment in view of Article 319 of the Constitution and he answered as under :

"The post of Chairman of Horticulture Board is not under the State Government. Therefore, I was entitled to be appointed as its Chairman."

Article 319(b) of the Constitution says that a Chairman of the Public Service Commission shall be eligible for appointment as Chairman or any other Member of the Union Public Service Commission or as Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of

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A a State.

In view of Article 319(b), the validity of appointment of Shri Kataria as Chairman of the Board of Horticulture could certainly be challenged. However, Shri Kataria remained on the post from 19.9.1995 to 21.5.1996 and, therefore, that question is not alive any more. Nor is it a matter B directly in issue. There is nothing on record to prove that he got this appointment by way of a favour from the then Chief Minister of Haryana, Shri Bhajan Lal.

For the aforementioned reasons, the Reference is answered in the C affirmative.

V.S.S.

Answering the reference
in the Affirmative.