

6114.82
IN THE PRIVY COUNCIL

10, 1962 No. 9 of 1961

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA

B E T W E E N

B. SURINDER SINGH KANDA (Plaintiff) Appellant

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYA (Defendant) Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

68221

SUMNER & CO.,
25, Dover Street,
Piccadilly,
London, W.1.

Solicitors for the Appellant.

WRAY, SMITH & CO.,
1, King's Bench Walk,
Temple,
London, E.C.4.

Solicitors for the Respondent.

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA

B E T W E E N

B. SURINDER SINGH KANDA (Plaintiff) Appellant

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYA (Defendant) Respondent

RECORD OF PROCEEDINGS

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- A204 Letter from Police Service Commission
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- A205 Letter from Jag-Jit Singh Solicitor for
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(x)

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A385	Letter from Counsel for Defendants to Plaintiff's Solicitor dated 5.12.59
2.	Pl. Medical Certificate of Plaintiff/Respondent by Mr. A.S. Alhady.
3.	P2. Official Diary for the year 1958 of the Plaintiff/Respondent
4.	D5. Statement of Loh Meow Kooi extracted from IP 1025/57 dated 29.5.57
5.	D6. Investigation Diary of Sgt. 356 Loh Thean Guan extracted from G.T.I.P. 1025/57.

Description of Document

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|-----|------|--|
| 6. | D7. | Statement of Koe Ah Huat extracted from G.T.I.P. 1025/57 |
| 7. | D8. | Statement of Ong Huan Eng extracted from G.T.I.P. 1025/57 |
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| 9. | D10. | I.D. unnamed but purported to be of Insp. Ng Hoong Fuan |
| 10. | D11. | Statement of Ang Keng Cheow extracted from G.T.I.P. 1025/57 |
| 11. | D12. | George Town IP 1025/57 |
| 12. | D13 | Federal Gazette Notification No.2270 G of 3.7.58 |
| 13. | D14. | File of Defaulter Report 4/58 and 5/58. |
| 14. | D15 | Record of the Board of Enquiry. |
| 15. | D16 | Covering letter dated 8.5.58 from Chief Police Officer, Penang to OCCI Penang. |
| 16. | D17 | Covering letter from CPO Penang to OCCI Penang dated 9.6.58. |
| 17. | | Notice in lieu of Service of Writ. |
| 18. | | Further and Better Particulars by Defendant (delivered on 3.12.59). |
| 19. | | Particulars filed by Defendant (delivered on 5.12.59). |

NO.1 - WRIT OF SUMMONS

AMENDED

WRIT OF SUMMONS

In the Supreme
Court of the
Federation of
Malaya
In the High Court
No.1

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT PEBANG

Civil Suit No.232 of 1959

Writ of Summons
1st October,
1959

BETWEEN B. Surinder Singh Kanda Plaintiff

and

The Government of the
Federation of Malaya Defendant

10

DATO SIR JAMES THOMSON P.M.N., P.J.K., CHIEF
JUSTICE OF THE FEDERATION OF MALAYA IN THE NAME
AND ON BEHALF OF HIS MAJESTY THE YANG DI-PERTUAN
AGONG.

To: The Government of the Federation of
Malaya Kuala Lumpur.

WE COMMAND you, that within twelve (12)
days after the service of this Writ on you in-
clusive of the day of such service, you do
cause an Appearance to be entered for you in
an action at the suit of B. Surinder Singh Kan-
da of No.170, Jalan Bunga Chempala, Bukit
Glugor, Penang.

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AND TAKE NOTICE that in default of your
so doing the Plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS SARWAN SINGH GILL, Registrar of
the Supreme Court of the Federation of Malaya
this 1st day of October, 1959.

30

Sgd. Jag-Jit Singh
Solicitor for the
Plaintiff

Sgd. Ajaib Singh.
Senior Assistant
Registrar,
Supreme Court, Penang.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.1

Writ of Summons
1st October,
1959
continued

N.B. - This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an Appearance (or Appearances) either personally or by Solicitor at the Registry of the Supreme Court at Penang.

A Defendant appearing personally may, if he desires, enter this Appearance by post, and the appropriate form may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the Supreme Court, at Penang.

10

The Plaintiff's claim is for -

- (1) A Declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by one W.L.R. Carbonell, the Commissioner of Police of the Federation of Malaya, on the 7th day of July 1958, was void, inoperative and of no effect, and that he is still a member of the said Force;
- (2) An order that the Defendant do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as an Inspector in the said Force from the date of the said purported dismissal;
- (2A) An Account of what is due to the Plaintiff from the Defendant in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation Police Force and an Order for payment by the Defendant to the Plaintiff of any sum upon taking such Account.
- (3) Further or other relief;
- (4) Costs.

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Sgd. Jag-Jit Singh
Plaintiff's Solicitor

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This Writ was issued by MR. JAG-JIT SINGH

3.

of No.25 Light Street Penang whose address for service is at No.25 Light Street Penang Solicitor for the said Plaintiff who resides at No. 170 Jalan Bunga Chempaka, Bukit Glugor, Penang.

In the Supreme Court of the Federation of Malaya
In the High Court

No.1

This Writ was served by me at
on the Defendant
on the day of 1959
at the hour of

Writ of Summons
1st October,
1959
continued

Indorsed this day of 1959

10

(Signed)

(Address)

AMENDED this 7th day of DECEMBER, 1959
pursuant to Order of Court dated the 7th of
December 1959 made in Summons in Chambers
No.331/59.

Sgd. Ajaib Singh
Senior Assistant Registrar,
Supreme Court, Penang.

(L.S.)

20

NO.2 - STATEMENT OF CLAIM

No.2

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Statement of
Claim as
Amended.
10th October,
1959

IN THE HIGH COURT AT PENANG

Civil Suit No.232 of 1959

(Writ issued on the 1st day of October, 1959)

BETWEEN B. Surinder Singh Kanda Plaintiff

and

The Government of the
Federation of Malaya Defendant

STATEMENT OF CLAIM

30

1. On the 1st day of March, 1951, the

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.2

Statement of
Claim as
Amended
10th October,
1959
continued

Plaintiff joined the Federation of Malaya Police Force as a Probationary Asian Inspector, and on or about the 31st day of August, 1951, by a Certificate of Appointment, was appointed a Superior Police Officer in the rank of Probationary Inspector in the said Force, being thereby duly vested with all the powers and privileges of a Peace Officer.

2. On the 1st day of June, 1953, the Plaintiff was confirmed in the rank of Inspector and emplaced on the Pensionable Establishment. 10

3. The Plaintiff was subject to the Provisions of the Police Ordinance, 1952, and the Police Regulations, 1952, and to all Rules, Regulations and Orders made thereunder, in so far as the said Provisions, Rules, Regulations and Orders were not inconsistent with the Provisions of the Constitution of the Federation of Malaya.

4. In proceedings commencing on the 16th day of April, 1958, and terminating on the 10th day of May, 1958, and held at the Police Headquarters, Penang, by one H.W. Strathairn, Chief Police Officer, Penang, sitting as Adjudicating Officer, the Plaintiff was charged and found guilty of an offence against discipline. 20

PARTICULARS OF MATERIAL OFFENCES
AGAINST DISCIPLINE WITH WHICH THE
PLAINTIFF WAS CHARGED

"That you at Penang between the 29th of May and 10th July, 1957, whilst performing your duties as a Police Inspector engaged in preparing George Town I/P 1025/57, did fail to disclose evidence of the facts of which particulars are set out below which, to your knowledge, could be given for (B1) LOH MEOW KOOI and (B2) ANG KENG CHEOW, charged with the offence of possession of forged lottery tickets, an offence under Section 474 Penal Code, and thereby committed an offence against Regulation 2 (A) 44 of the Police Regulations, 1952 and punishable under Section 45(1) of the Police Ordinance, 1952. 30 40

PARTICULARS

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.2

- (a) That ONG HUAN ENG and D/Sgt.647 KHOO CHENG HOE were present at the meeting at Sepoy Lines, Penang, on 25 and 26th May, 1957
- (b) That Insp. TEOH EE SAN introduced D/Sgt.356 LOH THEAN GUAN to KOE AH HUAT at Sepoy Lines, Penang, on 25.5.1957.
- 10 (c) That the bundle of forged lottery tickets was carried into the room at the White House Hotel, Penang, on 29.5.57 by KOE AH HUAT.
- (d) That ANG KENG CHEOW was not present outside the HOOI LAI Association on 29.5.57 when first accused LOH MEOW KOOI obtained the forged lottery tickets.

Statement of
Claim as
Amended
10th October,
1959
continued

20 Alternatively, that you at Penang on or about 10 July 1957 did submit George Town I/P 1025/57 to the O.C.C.I. Penang, knowing the same to be false in the particulars set out below, and that you are thereby guilty of conduct to the prejudice of good order and discipline, an offence against Regulation 2(A) 65 of the Police Regulations, 1952 and punishable under Section 45(1) of the Police Ordinance, 1952.

PARTICULARS

- 30 (a) That no mention was made of the fact that ONG HUAN ENG and D/Sgt.647 were present at the meetings at Sepoy Lines on 25 and 26 May, 1957.
- (b) That the Investigation Paper disclosed that Insp. NG HOONG FUAN introduced D/Sgt.356 LOH THEAN GUAN to KOE AH HUAT at the Sepoy Lines on 25 May 1957 when this introduction was, in fact, made by Insp. TEOH EE SAN.
- (c) That the Investigation Paper disclosed

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.2

Statement of
Claim as
Amended
10th October,
1959
continued

that the bundle of forged lottery tickets was carried into the room at the White House Hotel, on the 29th May 1957 by first accused LOH MEOW KOOI when in fact this bundle was carried into the room by KOE AH HUAT.

(d) That the Investigation Paper disclosed that second accused ANG KENG CHEOW handed the bundle of forged lottery tickets to first accused LOH MEOW KOOI outside the White House Hotel on 29th May, 1957 when, in fact, second accused ANG KENG CHEOW was not present on that occasion."

10

5. On the 10th day of May aforesaid or shortly thereafter the said Adjudicating Officer forwarded to one W.L.R. Carbonnell, Commissioner of Police, Federation of Malaya, Police Defaulter Report Serial Number 4/58, containing particulars of the place, witnesses, exhibits, finding and punishment recommended. Particulars of the said charges together with a record of the said proceedings were attached to or in the alternative forwarded together with the said Report.

20

6. By virtue of Articles 140 and 144 of the Constitution of the Federation of Malaya power to appoint members of the said Police Force is vested in a Police Service Commission.

7. On the 7th day of July, 1958, the said W.L.R. Carbonnell, Commissioner of Police was an authority subordinate to the said Commission.

30

8. On the 27th day of June 1958 the said Commissioner purported to award as punishment for the said offence that the Plaintiff be dismissed from the said Police Force.

9. The Plaintiff was orally notified of the said award of punishment by one J.R.H. Burns, Chief Police Officer, Perak on 7th day of July, 1958 and by letter signed by the said J.R.H. Burns and dated the 7th July as aforesaid.

40

10. By letter dated the 16th May, 1958, the Plaintiff applied to the said Commissioner to hear an Appeal in person against the said Conviction and sentence in accordance with rule 15

(1) and (3) of the Police Regulations, 1958, or in the alternative, in the belief that the said rule applied to the said Appeal in accordance with the terms of the said letter. No reply to or acknowledgement of the said letter, whether by the said Commissioner or at all, has ever been received by the Plaintiff.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.2

10 11. The Plaintiff appealed against the said conviction and sentence on the 14th day of July, 1958 to the Honourable Minister for Defence and Internal Security, Federation of Malaya, Kuala Lumpur and/or in the alternative to the Police Service Commission, Federation of Malaya, Kuala Lumpur, which said Appeal was dismissed by the said Minister on or about the 29th day of July, 1959.

Statement of
Claim as
amended
10th October
1959
continued

20 12. Although the Plaintiff was notified by the said Adjudicating Officer of a finding of guilt in general terms on the 10th day of May aforesaid, the Plaintiff was not informed as to which of the two said alternative charges it was in respect of which the said finding of guilt had been reached until he received a letter from the office of the said Commissioner dated the 22nd August, 1958 in which he was informed that he had been found guilty of an offence under rule 2(a)(44) of the Police Regulations, that is to say under the first of the two said alternative charges.

30 13. In the premises the said purported dismissal was void, inoperative and of no effect.

PARTICULARS

- (a) The said purported dismissal was effected by an authority subordinate to that which at the time of the dismissal had power to appoint a member of the said Police Force of equal rank to the Plaintiff's contrary to Clause 1 of Article 135 of the Constitution of the Federation of Malaya.
- 40 (b) The said purported dismissal was effected without the Plaintiff being given a reasonable opportunity of being heard contrary to Clause 2 of Article

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.2

Statement of
Claim as
Amended
10th October
1959
continued

135 of the Constitution of the Federa-
tion of Malaya.

14. In the further premises since the said
7th day of July, 1958, the Plaintiff has been
deprived of the pay, allowances and other emolu-
ments to which he was entitled as an Inspector
in the said Police Force.

And the Plaintiff claims -

(1) A Declaration that his dismissal
from the Federation of Malaya Police Force pur-
ported to be effected by one W.L.R. Carbonnell,
the Commissioner of Police of the Federation of
Malaya, on 7th day of July, 1958, was void, in-
operative and of no effect, and that he is still
a member of the said Force.

10

(2) An Order that the Defendant do pay
to the said Plaintiff all arrears of pay, allow-
ances, and other emoluments due and owing to him
as an Inspector in the said Force from the date
of the said purported dismissal;

20

(2A) An Account of what is due to
Plaintiff from the Defendant in respect of his
salary and all other emoluments found to be due
to him as an Inspector of the Federation Police
Force and an Order for payment by the Defendant
to the Plaintiff of any sum due upon taking such
Account.

(3) Such further and other relief as
the Honourable Court may deem just;

(4) Costs.

30

Dated at Penang this 10th day of October 1959.

Sgd. Jag-Jit Singh.
Plaintiff's Solicitor.

AMENDED this 7th day of DECEMBER 1959 pur-
suant to Order of Court dated the 7th day of
December 1959 made in Summons in Chambers No.331/
59.

Sgd. Ajaib Singh
Senior Assistant Registrar,
Supreme Court, Penang.

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(L.S)

NO.3 - FURTHER AND BETTER PARTICULARS
BY PLAINTIFF

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT PENANG

Civil Suit No.232 of 1959

BETWEEN B. Surinder Singh Kanda Plaintiff

and

The Government of the
Federation of Malaya Defendant

In the Supreme
Court of the
Federation of
Malaya
In the High Court
No.3

Further and
Better Parti-
culars of
Plaintiff
27th October
1959

10

FURTHER AND BETTER PARTICULARS

The following are the "further and better particulars" which the Defendants as per their Counsel's letter dated the 26th day of October, 1959 to the Plaintiff's Solicitor require from the Plaintiff in connection with paragraph 4 of the Plaintiff's Statement of Claim and referred to in paragraph 7(b) of the Defence.

Question:-

20

In what respect was the opportunity to be heard, which was given to the Plaintiff in the Proceedings as stated in paragraph 4 of the Plaintiff's Statement of Claim, not reasonable and/or contrary to Clause (2) of Article 135 of the Federal Constitution.

Answer:-

(a) The Plaintiff was not given "reasonable opportunity" to defend himself at the inquiry stage in that:-

30

(i) He was not given a copy of George Town Investigation Paper 1025/57 in toto as asked for by him in his letter to the Chief Police Officer, Penang, dated 3rd April 1958.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.3

Further and
Better Parti-
culars of
Plaintiff
27th October
1959
continued

- (ii) The Notes of Evidence in Penang High Court Criminal Trial No. 11/57 were not given to him as asked for by his abovementioned letter.
- (iii) The Investigation Diary of D/Sgt. 356 Loh Thean Guan was not given to Plaintiff till the 1st of December, 1958 i.e. many months after his dismissal. 10
- (iv) Extracts from George Town Investigation Paper 1025/57 were given to him on the 8th and 9th May 1958 and on the 9th of June 1958 i.e. after his Statement of Defence had been recorded by the Adjudicating Officer on the 5th May 1958.
- (v) The Diary of Insp. Teoh Ee San - (purported to have been handed to Insp. Ng Hoong Fuan) was never given to the Plaintiff inspite of the fact that he asked for the said Diary in his letter to the Chief Police Officer, Penang, of the 3rd April 1958. 20
- (vi) The withholding of these documents contravened The Commissioners Standing Order Part A. 207 para 8, and, therefore, amounted to a denial of Natural Justice. 30
- (b) Although the Plaintiff was informed in General terms by the Adjudicating Officer on 10th May 1958 that he was found guilty of the Original Charge, he was at no time informed of his impending dismissal. The first time Plaintiff knew that he was dismissed from the Police Force was on the 7th day of July 1958 when he was informed by letter from the Chief Police Officer, Perak, of the said date that he was being dismissed from the Police Force on being found guilty of an Offence under Regulation 2(A)44 of the 40

Police Regulations 1952 and punishable under Section 45(1) of the Police Ordinance 1952 and alternatively under Regulation 2(A)65 and punishable under Section 45(1) of the Police Ordinance 1952.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.3

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(c) The Plaintiff was not given "reasonable opportunity" immediately after the inquiry to make a Statement in extenuation of his Offence as provided by Section 4(7) of the Police Regulations, 1952. He was at no time invited to make such a Statement, and Section 4(7) of the Police Regulations 1952 was not complied with.

Further and
Better Parti-
culars of
Plaintiff
27th October
1959
continued

20

(d) The Plaintiff was not given "reasonable opportunity" of being heard before his dismissal, by the Commissioner of Police, as required under Commissioners Standing Order Part A.207 para 21.

30

(e) The Plaintiff was not given "reasonable opportunity" of making his Appeal in person as required under the Police Regulations 1952 in spite of a request he made in his letter to the Commissioner of Police on the 16th May 1958 and through his Solicitor by letter dated the 14th August 1959.

40

(f) The Plaintiff was not given "reasonable opportunity" of making his Appeal in that he was at no time given a Complete Record of The Orderly Room Proceedings to enable him to put up his Grounds of Appeal, and in particular the following documents:

1. Summing up by the Adjudicating Officer
2. Part of Statement of Plaintiff.
3. Plaintiff's letter of the 20th June, 1957 to the O. C. C. I., Penang.

In the Supreme Court of the Federation of Malaya
In the High Court

(g) The Plaintiff was not given a "reasonable opportunity" to be heard as to why he should not be dismissed as required under Article 135(2) of the Federal Constitution.

No.3

Further and Better Particulars of Plaintiff
27th October 1959
continued

Delivered at Penang this 27th day of November, 1959.

Sgd. JAG-JIT SINGH
SOLICITOR FOR THE ABOVE-NAMED PLAINTIFF.

10

No.4

NO.4 - STATEMENT OF DEFENCE

Statement of Defence as Amended
27th November 1959.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT PENANG

Civil Suit No.232 of 1959

BETWEEN B. Surinder Singh Kanda Plaintiff

and

The Government of the Federation of Malaya Defendant

A M E N D E D

STATEMENT OF DEFENCE

20

1. Paragraphs 1 to 5 of the Plaintiff's Statement of Claim are admitted except that with regard to paragraph 4 thereof, it is claimed that the proceedings terminated on 10th May, 1958. The said proceedings terminated on 11th June, 1958 except also that with regard to paragraph 5 thereof the exact date upon which the Adjudicating Officer forwarded the said proceedings to the said Commissioner was in the first instance,

23rd May, 1958 and in the second instance 14th June, 1958 the said proceedings having been referred back to the said Adjudicating Officer by the Commissioner on 5th June 1958 for further evidence to be taken under Regulation 4(7A) of the said Police Regulations 1952.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.4

10 2. Paragraph 6 of Plaintiff's Statement of Claim is not admitted in that power to appoint a "superior police officer" as defined in section 2 of the Police Ordinance 1952 is not by virtue of Articles 140 and 144 of the Federal Constitution vested in a Police Service Commission.

Statement of
Defence as
Amended
27th November
1959
continued

The provisions of Article 144(1) of the Federal Constitution are therein stated to be subject to the provisions of "existing law".

The Police Ordinance 1952 is "existing law" as defined in section 160 of the Federal Constitution.

20 Plaintiff being a "superior police officer" as so defined may in accordance with section 9 of the said Ordinance be appointed within that grade by the Commissioner of Police and Plaintiff was so appointed.

3. Paragraphs 7 to 9 of Plaintiff's Statement of Claim are admitted.

30 4. Paragraph 10 of Plaintiff's Statement of Claim. It is admitted that an application was made by Plaintiff in terms of his letter to the said Commissioner dated 16th May, 1958, and that no acknowledgement or reply was sent to Plaintiff for the reason that Regulation 15(1) of the Police Regulations 1952 at that time provided that an appeal shall be to the Chief Secretary and not to the Commissioner in respect of a superior police officer who has been awarded dismissal or reduction in rank. Upon Plaintiff appealing to the proper authority his appeal was heard by a Committee appointed by the Police Service Commission under paragraphs (1) and (3) of the said Regulations on 23rd April and 20th June, 1959. Following the hearing of the appeal, Plaintiff was informed by the said Commission on 40 29th July, 1959 that the Minister of Defence (the

In the Supreme Court of the Federation of Malaya
In the High Court

No.4

Statement of Defence as Amended
27th November 1959
continued

present legal appellate authority under Regulation 15(1)(a) of the said Regulations) had decided to reject his appeal against conviction and to confirm the punishment of dismissal awarded by the Commissioner of Police.

5. Paragraph 11 of Plaintiff's Statement of Claim is admitted except that the date when Plaintiff appealed against the said conviction and sentence was the 15th as well as the 14th day of July, 1958.

10

6. Paragraph 12 of Plaintiff's Statement of Claim is denied. Plaintiff was informed verbally that he was found guilty of the alternative charge under Regulation 2(a)(44) of the said Regulations and in a letter dated 16th May 1958 to the Commissioner of Police (referred to in paragraph 10 of Plaintiff's Statement of Claim) Plaintiff disclosed that he was aware that judgment was reserved in respect of the said alternative charge.

7. Paragraph 13 of Plaintiff's Statement of Claim is denied.

20

Particulars.

(a) The Plaintiff being a "superior police officer" as defined in section 2 of the said Ordinance having been appointed by the Commissioner of Police under section 9 of the said Ordinance and having been found guilty of an offence against discipline under Regulation 2 (a)(44) of the said Police Regulations to which he was subject, became liable under section 45 of the said Ordinance to the punishment of dismissal by the Commissioner of Police as set out in the First Schedule to the said Ordinance. In accordance with the provisions of Article 144 of the Federal Constitution read along with the provisions of sections 2 and 9 of the said Ordinance, the Commissioner of Police was empowered to appoint Plaintiff a "superior police officer" which he duly did.

30

40

The said Commissioner being empowered

and being empowered also under Regulation 4(2)(c) of the said Regulations to award Plaintiff the punishment of dismissal in respect of the offence for which he had been found guilty, the dismissal of Plaintiff by the said Commissioner was not effected by an authority subordinate to that which at the time of dismissal had power to appoint him. In dismissing Plaintiff, the said Commissioner was therefore not acting contrary to clause 1 of Article 135 of the Federal Constitution.

In the Supreme
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Federation of
Malaya
In the High Court

No.4

Statement of
Defence as
Amended
27th November
1959
continued

10

- (b) Plaintiff was given a reasonable opportunity of being heard in accordance with Article 135(2) of the Federal Constitution, his case having been heard by the Chief Police Officer, Penang, in proceedings commencing and terminating as stated in paragraph 4 of the Plaintiff's Statement of Claim.

20

Plaintiff is called upon to supply further and better particulars under this sub-head.

7A.

(Added pursuant to Order of Court dated 23.11.1959 but subsequently withdrawn by leave of Court vide Order dated 1.12.1959)

30

8. Paragraph 14 of Plaintiff's Statement of Claim is denied. The Plaintiff having been lawfully dismissed with effect from 8th July 1958 was not entitled to further pay or allowance as from that date.

And the Defendant prays -

- (1) That no Declaration be made in the terms claimed by Plaintiff.
- (2) That no Order be made in the terms claimed by Plaintiff.
- (3) That Plaintiff's Claim be dismissed with costs.

40

Delivered at Penang this 27th day of November, 1959.

(Sgd.) L.A. MASSIE
Senior Federal Counsel,
Penang.
Counsel for Defendant.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.5

Further and
Better Parti-
culars of
Defendant
21st November
1959

NO.5 - FURTHER AND BETTER PARTICULARS
BY DEFENDANT.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT PENANG

Civil Suit No.232 of 1959

BETWEEN B. Surinder Singh Kanda Plaintiff

and

The Government of the
Federation of Malaya Defendant.

P A R T I C U L A R S

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The following are the particulars delivered by the Defendant to the Plaintiff's Solicitor's Letter dated 11th November, 1959.

His paragraph (a) The exact date when the Adjudicating Officer forwarded Police Defaulter Report Serial No.4/58 to the Commissioner of Police Federation of Malaya was in the first instance 23rd May 1958 and in the second instance 14th June 1958, the said proceedings having been referred back to the said Adjudicating Officer by the Commissioner on 5th June 1958 for further evidence to be taken under Regulation 4(7A) of the Police Regulations 1952.

20

His paragraph (b) The exact date of the Finding of Guilt by the Adjudicating Officer was 10th May 1958.

30

His paragraph (c) The actual date on which punishment was recommended was 10th May 1958.

His paragraph (d) The nature of the punishment recommended was dismissal.

His paragraph 2(c) The actual date when the Plaintiff was informed verbally that he was found guilty of the Alternative Charge under Regulation 2(a) (44) of the Police Regulations 1952 was 10th May 1958.

In the Supreme Court of the Federation of Malaya
In the High Court
No.5

10

His paragraph 2(b) The name of the Officer who informed him of this fact was H.W. Strathairn.

Further and Better Particulars of Defendant
21st November 1959
continued

His paragraph 3(a) A reasonable opportunity was given to Plaintiff of being heard in accordance with Article 135(2) of the Federal Constitution in that all relevant provisions of law relating to the Hearing were properly complied with.

Delivered this 21st day of November, 1959.

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Sgd.

(L.A. Massie.)
Senior Federal Counsel,
Federation of Malaya.
Counsel for Defendant.

NO.6 - SUBMISSIONS ON BEHALF OF PLAINTIFF

NOTES OF EVIDENCE TAKEN BEFORE THE HON.
MR. JUSTICE RIGBY.

9th December, 1959
CIVIL SUIT NO.232 of 1959

No.6
Submissions on behalf of Plaintiff
9th December 1959.

30

B. Surinder Singh Kanda	<u>Plaintiff</u>
vs.	
The Government of the Federation of Malaya	<u>Defendant</u>

Jag-Jit Singh for Plaintiff
L.A. Massie, Senior Federal Counsel, for Defendant.

Jag-Jit Singh:

Broadly speaking, Plaintiff contends his

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.6

Submissions
on behalf of
Plaintiff
9th December
1959
continued

dismissal unlawful because not made by an authority authorised by law; and

(b) Defendants have violated his constitutional rights as provided by Article 135(1) of the Federal Constitution; and

(c) His dismissal effected without giving him a reasonable opportunity of being heard, thereby violating further constitutional right under Article 135(2).

10

Point (a) :

Was dismissal effected by the proper authority?

Who was the appointing authority?

Submit on date of his dismissal - 7.7.58 - it was the Police Service Commission.

Article 144(1).

Plaintiff contends he was dismissed by the Commissioner of Police - an authority sub ordinate to the Police Service Commission.

20

Statement of Claim -- paragraph 7 and
Statement of Defence - paragraph 3.
Constitution of Malaya came into being on
Merdeka Day - 31.8.57.

Plaintiff will prove that since that date all appointments of Superior Police Officers have been made by Police Service Commission.

Massie: On behalf of the Commissioner of Police. 30

Jag-Jit Singh:

Submit that what Police Services Commission have done - and continue to do - has become law by virtue of Article 162.

Submit that if Police Service Commission has adapted any of the existing law then the

Police Ordinance in so far as it relates to those adaptations is impliedly repealed.

Refer to Article 162(6) and (7).

Section 9(1) of Police Ordinance empowers Commissioner of Police to appoint a superior police officer.

Section 45(1), read in conjunction with the First Schedule, empowers him to dismiss. We concede that if those statutory provisions were still operative on 7.7.59 then this dismissal valid - but submit not operative by virtue of the coming into force of the Constitution on 31.8.57.

Article 162(1) provides for the continuance of the existing law unless repealed.

Police Service Commission came into existence on 31.8.57 by virtue of Section 1 of Service Commissions Ordinance, No.74 of 1957.

Article 144(1) read in conjunction with Article 140 then powers of appointment of superior police officers vested in the Police Service Commission.

Where the enacting part of a statute clearly confers powers upon one body it is impossible for another body to seek authority for the exercise of the same powers from the proviso. Guardians of the Poor of West Derby Union v. Metropolitan Life Assurance Society & Ors. ((1897) A.C., 647).

Summers v. Holborn District Board of Works. ((1893) 1, Q.B., 612, at 618).

We submit that Article 144(1) read in conjunction with article 140 repeal by implication powers of the Commissioner of Police as to appointment and dismissal of superior police officers.

Repeal by implication.

In the Supreme Court of the Federation of Malaya
In the High Court

No.6

Submissions on behalf of Plaintiff
9th December 1959
continued

10

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In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.6

Submissions
on behalf of
Plaintiff
9th December
1959
continued

Churchwardens & Overseers of West Ham v.
Fourth City Mutual Building Society & Anor.,
((1892) 1, Q.B., 654 at 658).

Brown v. G.W.R., ((1881-2) 9, Q.B., 744 at
753.)

Daw v. Metropolitan Board of Works (142,
E.R., 1104)

Paget v. Foley ((1836) 132, E.R., 261.
Article 4(1)).

This Constitution is the supreme law of the
Federation. 10

Therefore clear that the provisions of the
Police Ordinance, 1952 and Police Regulations,
1952 are not consistent with the provisions
of the Constitution.

Plaintiff has expressly pleaded in paragraph
3 that he is only subject to provisions of
Police Ordinance and Regulations in so far
as they are not inconsistent with the provi-
sions of the Constitution. 20

This the Defendants have expressly admitted
in paragraph 1 of Statement of Defence.

Since Merdeka Commissioner of Police has
made no appointment of a superior police
officer.

North West Frontier Province v. Sura Narain,
(1949, A.I.R., (P.C.) 112).

Commentary on Constitution of India by D.D.
Basu, page 469.

The High Commissioner for India v. I.M.Lall 30
(1948, A.I.R., (P.C.), Vol.35, page 121.)

(B) Was Plaintiff's dismissal effective with-
out giving him a reasonable opportunity
of being heard, as provided by Article
135(2)?

Defendants have "massacred" Plaintiff from
beginning to end - even to extent of changing

documents and replacing them with other documents.

"Reasonable opportunity of being heard" must be construed as being "reasonable opportunity of being heard as to his dismissal".

Submit Article 135(2) must be read in conjunction with Article 135(1).

The High Commissioner for India v. I.M.Lall,
already cited.

In the Supreme
Court of the
Federation of
Malaya
In the High Court

No.6

Submissions
on behalf of
Plaintiff
9th December
1959
continued

10 Opportunity of being heard should be afforded before dismissal was finally decided by the Dismissing Authority - i.e. right up to the responsible Minister.

Compare Section 240 of Government of India Act - "reasonable opportunity of showing cause".

20 Submit Article 135(2) should be read in conjunction with Section 38 of the Public Officers (Conduct and Discipline) Regulations, 1956.

Evidence will show that Plaintiff - at time of dismissal - was a Division II officer on a pensionable scheme.

Police Ordinance and Police Regulations are silent as to procedure to be adopted after an officer has been found guilty and convicted and before he is finally dismissed.

Police Regulations, 1952 - Regulation 4 deals only with Orderly Room Proceedings.

30 Section 22 of Police Ordinance, 1952.

Refer to Section 38 of Public Officers (Conduct and Discipline) Regulations, 1956.

Therein lies the procedure affording officer an opportunity to be heard as to his dismissal.

In fact - Plaintiff not given an opportunity

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to be heard as to his dismissal.

Two stages:

- (1) Reasonable opportunity of being heard to meet the facts charged.
- (2) If found guilty, reasonable opportunity to be heard as to the penalty to be imposed.

Rajagopala v. Madras State (1935, A.I.R.
(Madras) 182 at 187.)

Question of fact as to whether he was given such an opportunity - and Court has jurisdiction to decide whether such an opportunity ever given. 10

Police Ordinance - Section 47 - statutory right of appeal.

Police Regulations - Regulation 15 - Procedure on appeal.

Upon such appeal punishment shall be either confirmed or reduced.

Plaintiff not given all the necessary papers for purposes of conducting his appeal. 20

Defendants originally stated proceedings terminated on 10.5.58 - but subsequently conceded they terminated on 11.6.58.

Plaintiff appealed on 16.5.58 (see letter A.70).

Plaintiff received neither reply nor acknowledgement of that letter.

See paragraph 10 of Statement of Claim - admitted by paragraph 4 of Statement of Defence. 30

On date of his actual trial another charge was added - see A.135.

See letter at A.70.

Paragraph 2 - "On the first charge judgment is reserved".

Form at A.131.

Contend that Form re-written at some subsequent date and backdated.

The original form is now missing.

Look at letter at A.362 - dated 23rd May.

File sent to Commissioner of Police for Mr. Hindmarsh.

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10 Duty of Commissioner of Police to apply his mind to the conviction. Will submit he never even "smelt" the papers.

A.365 - Letter from Mr. Yates dated 5.6.58.

Note Appendix "A" (A.366) paragraph 2.

Regulation 4(7A) of Police Regulations.

As a matter of law submit it was only the Commissioner of Police - as Reviewing Officer - who had power under the Regulations to remit the case to the Adjudicating Officer.

20

The Orderly Room Proceedings:

What opportunity was he denied?

(1) Plaintiff informed on 1.4.58 there were disciplinary charges against him and they would commence on 9th April (letter A.9.)

(2) Plaintiff at once wrote for certain documents to be supplied - letter A.11.

(3) As result proceedings did not commence till 16th April.

30

(4) On commencement of proceedings on 16th April - a further charge preferred against him (A.135).

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(5) At outset of proceedings Plaintiff:

- (i) asked for adjournment to meet the further charge, and
- (ii) because not in possession of all necessary documents required for his defence, and
- (iii) he objected to the charges as framed - see A.362 - paragraph 3 - and A.366.

Orderly Room proceedings lasted several days. Accused's defence called on 5.5.58 (A.184). As to A.377. 10

Plaintiff contends that this statement was made in reply to his conviction on the 2nd charge and could not have been made on 1st charge because not yet convicted on that charge.

Plaintiff does not remember making any statement.

Refer to my letter at A.373 and the reply at A.380. 20

Letter of Dismissal at A.77.

Does not say on which charge Plaintiff was convicted.

Numerous letters by Dato Rajasooria asking on which charge Plaintiff had been convicted.

Letters unanswered, till A.120 - dated 22.8.58.

Appeal filed on 14.8.58.

Up to their letter of 22nd.8.58 authorities still considering what documents they would or would not give. 30

See Commissioner of Police's further letter - A.130 - dated 1.12.58.

Appellate authority finally dismissed the appeal (A.204) - 1 year and 23 days after date of lodging of the appeal.

12.55 p.m. Adjourned to 2.30 p.m.

(Signed) I.C.C. Rigby
JUDGE 9.12.59.

2.30 p.m. Resumed:

Jag-Jit Singh:

Inquiry started on 16th April.

Documents given to Plaintiff on evening of 14th April.

Asked for Agreed Bundle of Documents to be marked "A".

Marked accordingly.

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P.W.1. - BHAGAT SURINDER SINGH KANDA, affirmed,
States in English.

Aged 28. Reside 170 Jalan Bunga Chempaka,
Bukit Glugor, Penang.

Joined Police Force on 1.3.51 as a Pro-
bationary Asian Inspector.

On 31.8.51 appointed as a Superior Police
Officer, in rank of Probationary Inspector.

On 1.6.53 confirmed in rank of Police
Inspector.

In May, 1957 I was attached to Contingent
Police Headquarters, Penang and was performing
duties of :-

- (1) Officer in charge of Criminal Records,
- (2) Officer in charge of Anti-Vice,
- (3) Officer in charge of Special Crime
Branch.

Same year - 1957 -I was recommended by
Chief Police Officer, Penang, to rank of Assist-
ant Superintendent of Police.

On 7.11.57 I appeared before a Promotions
Board.

At the interview one of the members of the
Board - Mr. Jackson, the then Deputy Commis-
sioner of Police - told me "Are you not under a
cloud regarding a certain investigation?"

10

20

30

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He then referred to the Penang forged lottery ticket case - and I was asked to explain.

Q. How did the Promotions Board get this information?

A. Mr. Jackson referred to my Personal File which was before him.

Yes, I presumed that there was some adverse report in my Personal File.

I was surprised - because I had never been notified that there was some adverse report against me regarding this investigation.

10

Under Commissioner of Police's Standing Orders - if there is an adverse report against an officer he is required to be notified of that fact - in writing - and the officer must acknowledge receipt in writing.

On 11.11.57 I wrote a letter to the Chief Police Officer, Penang - copy thereof at A.2.

I received no reply thereto as result of which I send the two reminders at A.3 and A.4.

20

I have never had an acknowledgement of my letter at A.2.

On 18.1.58 I received a letter - A.5. - from the Chief Police Officer.

Re paragraph 3 of that letter.

A Commissioner of Police's Board of Inquiry - under Commissioner's Standing Orders - Part A.122 - paragraph 4 - is only held in instances where there has been a major failure on the part of the Force - and not as against an individual officer.

30

Re paragraph 4 of that letter - I had been in and out of hospital a number of times because I was genuinely sick.

I produce an original medical certificate - dated 7.12.59 - from Mr. Alhardy - as to cause of my illness.

Certificate put in as Ex.P.1.

On 22.1.58 I replied - A.7 - to that letter.

Refer to paragraph 4 thereof.

A Board of Inquiry was held.

I was called as a witness at that Inquiry.

Q. Were you allowed to sit through that Inquiry?

A. No.

On 24.1.58 I was called up by Mr. Sykes, O.C.C.I., and told I was bordering on insolence by writing my letter at A.7 and not only was my conduct the subject of one but of two Commissioner of Police's Board of Inquiry. I was further told to stop writing letters like this.

N.B.

Letter shown by Legal Adviser to Court.

It confirms in every respect witness's testimony as stated above.

(Signed) I.C.C. RIGBY
JUDGE.

Witness continued:

There was no other Inquiry held by any Board of Inquiry against me.

On 24.3.58 I received the Chief Police Officer's letter at A.8. A letter of censure.

I was given no opportunity to reply to allegations contained in that letter.

On 3.4.59 I received letter at A.9 - together with enclosure A.10.

On same day I wrote to Chief Police Officer the letter at A.11, requesting him to supply me with the documents mentioned therein.

I required those documents in order to prepare my defence.

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continued

10

20

30

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On 14.4.59 - about 6 p.m. - the C.C.C.I., Mr. Kay Kim Seng - called me to his house - and there handed me the letter dated 14.4.59 - appearing at A.12.

He also gave me copies of statements recorded by the Board of Inquiry - the statements I had asked for in my letter, A.11, at paragraph 2(3) I to IX.

I was not given X and XI - nor the documents I had asked for in paragraph 2(1) and (2). 10

Q. Were you at any time given the Findings of the Board of Inquiry?

A. No.

I was only given the statements - copies of which appear at A.13 to A.44 inclusive.

I was instructed to appear in the Orderly Room next morning - 15 April.

I did so - and was there told Inquiry would commence on 16th April.

I appeared on 16th April - and was then handed the additional charge which appears at A.45. 20

Mr. Strathairn was the Adjudicating Officer (A.O.).

I objected - saying that I had had insufficient time to prepare my case and that the charges were contrary to Police Regulations 3(2).

The Adjudicating Officer told me this was not a Court of Law - and ordered me to carry on.

The evidence of D.S.P. Tan Chin Teik was taken - he was the first witness. 30

Witness referred to A.131.

Not correct that A.S.P. Aloysius Chin was the first witness.

Yes, I have documentary evidence to prove D.S.P. Tan and not A.S.P. Chin was the first witness.

I produce here my Official Police Diary for 1958 - I am obliged to keep that Diary.

It is checked and verified monthly by the O.C.C.I.

Diary put in and marked Ex. P.2.

Refer to my entry therein for 16th April.

D.S.P. Tan's statement appears at A.167.

There it is undated.

The last witness was Ang Keng Cheow.

10 His statement appears at A.181 - undated.

The Inquiry started on 16.4.58.

The order of witnesses as stated in A.131 is incorrect.

My defence called on 5th May and I concluded it on 7th May.

I was then told to leave and told I would be informed of the result of the Inquiry.

20 On 8th May I was again called up by the Adjudicating Officer and handed documents which had been extracted from George Town Investigation Paper 1025 of 1957.

Those documents appear at A.46 to A.65 inclusive.

On 9th May the O.C.C.I. gave me further documents - one of which was a further extract from the Investigation paper.

Those documents appear at A.67 to A.69 inclusive.

30 On 10th May at the Orderly Room I was informed by the Adjudicating Officer that the charges had been proved; that he reserved judgment on the first charge, but on the second charge he awarded me a severe reprimand.

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I cannot remember whether or not I made the statement there recorded.

- Q. Did the Adjudicating Officer tell you on 10th May what punishment he proposed against you?
A. He told me he reserved judgment on the first charge and awarded a severe reprimand on the second.

On 16.5.58 - by my letter A.70 - I appealed to the Commissioner of Police.

I never received a reply to that letter. 10

- Q. Was your appeal heard?
A. No.

Nothing further happened till on 9th June I was given further documents by the O.C.C.I., - Mr. Kay Kim Seng.

Those documents appear at A.72 - A.76 inclusive.

The O.C.C.I. further told me that I was to appear before the Adjudicating Officer on 11th June.

On 11th June I appeared before the Adjudicating Officer. 20

Evidence was then recorded by the Adjudicating Officer from Loh Meow Kooi and Ang Keng Cheow (the two accused in the forged lottery ticket case.)

On 14th June I was again called before the Adjudicating Officer who informed me that he was including the documents appearing at A.72-A.76 inclusive as exhibits in the proceedings against me.

On the same day I left on transfer from Penang to No.2, Police Field Force, Ipoh and from there I was sent to deep Jungle at Fort Brock by helicopter. 30

As result of Board of Inquiry :-

A.S.P. Aloysius Chin,
 D.S.P. Tan Chin Teik,
 D.S.P. Sykes,
 Detective Sergeant Lo Thean Guan, and
 Detective Sergeant Khoo Cheng Hoe

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all received letters of censure over their conduct in the forged lottery ticket case.

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10

Criminal proceedings for perjury were taken in Sessions Court against Police Inspector Ng. Hoong Fuan. He pleaded guilty to the charge and was bound over for two years to be of good behaviour. He is still in the Police Force.

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 continued

Sergeant Lo Thean Guan was also charged with perjury but the charge of perjury was withdrawn.

On 6.7.58 I was flown by helicopter from Fort Brook to Ipoh.

20

On 7.7.58 - in Orderly Room - I was handed by Chief Police Officer, Perak - the letter of dismissal, copy of which appears at A.77-78.

The subject matter of the charge against me arose out of George Town I.P.1025 of 1957.

It was for that reason I had asked for a complete copy of contents of that I.P.

I have never received one at any time prior to my dismissal and appeal.

I have only been permitted to inspect that file after the institution of these proceedings.

30

On 14.7.58 I lodged my Notice of Appeal - A.79.

As I was uncertain as to who was the Appellate Authority I sent copies of my appeal to both the Minister for Defence and the Police Service Commission.

On 15.7.58 - at A.80 - I repeated my appeal, through Dato Rajasooria.

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On 23.7.58 - Dato Rajasooria sent further letter - A.83.

I refer to paragraphs 3 and 5 of that letter.

Further correspondence. I did not get the further documents for which I had asked.

On 14.8.58 - A.86-87, written by Dato Rajasooria attaching my Grounds of Appeal - A.88 - 117.

Those Grounds of Appeal submitted without having yet been informed on which of the alternative charges I had been convicted - and without having yet received a copy of the Orderly Room proceedings.

10

On 22.8.58 - by letter at A.120 - my Solicitor Dato Rajasooria was informed that I had been found guilty on the first charge.

I still did not receive the documents for which I had asked.

Further correspondence ensued - as at A.121 - 129.

20

(N.B.: A.128)

On 1.12.58 - I received the letter at A.130 attaching an incomplete copy of the Orderly Room proceedings and copy of the Investigation Diary of Detective Sergeant Lo Thean Guan.

Those documents are reproduced at A.131-190 inclusive.

Court: Q. Why do you say it is incomplete?

A. Because if one looks at A.131 there is a reference to exhibits.

30

I did not receive copies of any of those exhibits.

I was particularly interested in the "summing-up by the Adjudicating Officer" - because it would have shown the grounds on which I was convicted. I did not receive it.

Witness continued:

On 3.12.58 my Solicitor Dato Rajasooria wrote letter - A.191 - complaining inter alia of the incomplete record sent to me.

Further correspondence ensued - A.193-203.

I have not yet received the complete records for which I asked.

On 29.7.58 - by letter A.204 - I was informed that my appeal was dismissed.

10 On 1.10.58 I instituted these proceedings.

The Inquiry terminated on 5.10.58 - and further evidence was recorded.

I was never told of the reasons for the further proceedings.

Jag-Jit Singh:

This is admitted by the letter at A.271.

4.30 p.m. Adjourned to 10 a.m. tomorrow,
10.12.59.

20 (Signed) I.C.C. Rigby
JUDGE.

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CIVIL SUIT NO.232 of 1959

B. Surinder Singh Kanda ... Plaintiff.

v.

The Government of the
Federation of Malaya. ... Defendant.

10 a.m. Resumed.

Counsel as before.

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P.W.1. - Bhagat Surinder Singh Kanda (Plaintiff) -
recalled - reminded on former affirmation -
states :-

Examination-in-chief continued:

Q. In what matter were you denied opportunity to
put forward your defence?

A. I was informed by the Chief Police Officer
that my conduct was the subject of a Commis-
sioner of Police's Board of Inquiry and that
the charges arose as result of Findings of
that Board of Inquiry.

10

At no stage was I given a copy of the Find-
ings of that Board.

President of that Board of Inquiry was Mr.
D.W. Yates, Senior Assistant Commissioner
(C.I.D.).

Had I been given these Findings I would have
based my defence in answering those points that
condemned me.

Secondly, I was not given sufficient time -
after I had obtained the documents - to prepare
my case since documents were given to me at 6 p.m.
on 14th April and Orderly Room proceedings com-
menced on morning of 16th April.

20

When I was originally given the documents on
evening of 14th April I was told proceedings
would commence following morning.

I went there on following morning - 15th
April - and then told proceedings would commence
on 16th April.

30

Thirdly, the charges were not framed in ac-
cordance with Section 3(2) of Police Regulations -
providing that each charge should be a distinct
charge.

I protested - but was overruled.

Fourthly, I was not given George Town I.P.
1025 of 1957 at all - but only parts of it after
my defence had been recorded and closed.

George Town I.P. formed the main element of

the charge against me.

These papers not given to me - despite the fact I had asked for them.

Fifthly, I was never given a copy of the notes of evidence in Criminal Trial Penang High Court No.11 of 1957. I required these notes since the first letter that accompanied the charges against me - the letter at A.9 - clearly said that the charges arose out of proceedings at that trial. I have never received these notes of evidence.

10

Sixthly, I was never given a copy of George Town I.P. - Diary of Sergeant Lo.

Only received this on 1.12.58 - after I had filed my grounds of appeal.

The diary appears at A.188-190.

Seventhly, I was never given the summing-up of the Adjudicating Officer until after the institution of this Suit. (Summing-up at A.377.)

20

Privilege was first claimed in respect of that I.P. and then withdrawn - and I was then allowed to inspect the Diary.

It was a most vital document for purpose of enabling me to prepare my grounds of appeal.

Eighthly, I was never allowed an opportunity by the Commissioner of Police to present my appeal to him in the first instance.

30

As to the summing-up (A.377) I cannot remember the Adjudicating Officer stating the "certain facts which stand out clearly" upon which he relied in finding me guilty.

On 7.7.58 - date of my dismissal - my basic salary was \$433 plus \$94 (I think) C.O.L.A. I was also entitled to \$45 jungle operation allowance.

Also entitled to free partly furnished quarters or a variable house rent of \$80-\$350 in

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Cross-examination

lieu thereof - depending on place where stationed.

Also entitled to free medical services for self and family. On admission to hospital I would have had to pay 1% of salary.

Since my dismissal my wife has given birth to a child - at Maternity Hospital - and also been in hospital for an abdominal complaint.

On day of my dismissal I was not paid any salary that was due to me.

CROSS EXAMINED:

10

No, I was never a Gazetted Officer.

It was the Chief Police Officer - Mr.P.H. O'Flynn - who recommended me for promotion.

Q. You have no evidence of that?

A. I appeared at a Contingent Police Selection Board before the Chief Police Officer.

About 25 - candidates - of whom 13 later went before the Police Service Commission Board - for further selection.

Q. I am handing you the re-written copy of Pol.9A (A.131) Do you say that the order of the witnesses, as there shown, has prejudiced you in any way?

20

Jag-Jit Singh:

That is not my point.

My point is that this is not the original document, and the original document has not been produced.

A. The order of the witnesses - as there stated - is not in itself prejudicial.

30

Massie - in reply to Court:

The original of A.131 has been destroyed - by the Adjudicating Officer - at time he re-wrote it.

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Witness continued:

10 I say that this not a true copy of the original record and cannot be a true copy of the original record because the evidence of the witnesses A.10 and A.11 was not taken till the 11th June whereas this copy purports to be dated the 10th May.

Further, the exhibits from D.5 onwards could not have been there - on 10th May - because Exhibits column states "Original statement of Witness A.10, D.5" - which was not taken till 11th June - and I therefore suggest that the additions stated in the Exhibits column have been added in the copy made (A.131) and would not appear in the original.

20 Yes, I do suggest a sinister motive.

To anyone looking at that document as it stands it would appear that the Inquiry concluded on 10th May and that the statements of witnesses A.10 and A.11 had been recorded before 10th May - and further, that the Exhibits from D.5 onwards had been produced before the 10th May.

This could not possibly be true.

Yes, I do say this has prejudiced my case.

30 These documents were forwarded to the Commissioner of Police to award punishment - dismissal from the Force.

The Commissioner of Police's decision is endorsed on that document. My contention is that he was clearly deceived by that document - into believing that the Inquiry terminated on the 10th May.

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To Court:

Yes, I say that the decision to refer the case back to the Adjudicating Officer for further evidence to be taken was not made by the Commissioner of Police but by some other officer.

I say that had the Commissioner of Police seen this document in its original state there is every possibility that he would never have awarded dismissal.

My complaint of the letter at A.362 is that it was addressed for the attention of Mr. Hindmarsh and not of the Commissioner of Police personally.

10

Q. You say this despite the powers of the Commissioner of Police to delegate to a Deputy Commissioner or Senior Assistant Commissioner?

A. I say that such powers in so far as they relate to punishment involving dismissal have to be specifically delegated in accordance with the Commissioner's Standing Orders - A.207 - paragraph 9(1).

20

Yes, I agree that the recorded statement of the witness A.10 does show at its commencement that his evidence was recorded on 11th June - (page A.178).

But the recorded statement of the witness A.11 is undated (page A.181).

Q. Do you attach anything sinister to the fact that the statement of A.11 is undated?

A. Yes, the first and last recorded statements of the witnesses who gave evidence in the proceedings against me are undated - it is open to the presumption that they were both taken - as shown on the Form at A.131 - before the 10th May.

30

Q. Would your Grounds of Appeal have been different if you had received a copy of the Summing-Up?

A. Yes.

Q. In what respect?

A. On those grounds as they appear in the Summing-Up (A.377) there are no grounds at all for my conviction.

40

Q. Looking at A.116 - which summarise your Grounds of Appeal - what additional grounds would you have had if you had at that time been in possession of the Summing-Up?

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Jag-Jit Singh:

Plaintiff's Evidence

Witness not a lawyer.

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Matter then in hands of his lawyer.

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Cross-examination continued

A. I would have had to have had the advice of the Solicitor.

10 This letter - (put in as Ex.D.3 - copy at A.376) was produced by me to the Adjudicating Officer when I was making my defence to the charges against me.

11.40 a.m. adjourned to 3.30 p.m.

(Signed) I.C.C. RIGBY
JUDGE.

3.40 p.m. Resumed:

P.W.1. Bhagat Surinder Singh Kanda (Plaintiff) - reminded on former affirmation:

20 Cross-examination resumed:

I see the document now shown.

Put in and marked Ex.D.4.

I cannot remember making it - but may have done so. But if I made it, I made it as extenuating circumstances in respect of the charge upon which I was found guilty i.e. the charge, a copy of which appears at A.377.

30 The Adjudicating Officer told me that the first charge was proved and that he reserved judgment.

I said that in my letter to the Commissioner of Police at A.70.

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I don't agree the document at A.377 tends to show he found me guilty on the original charge and asked me if I had anything to say.

I see the document now shown to me.

Put in and marked Ex. D.5.

Yes, I agree the endorsement thereon is correct.

(N.B.: This is the statement at A.72-73 but without the endorsement).

I see the document now shown to me.

10

Put in and marked Ex. D.6.

The endorsement thereon is not a true endorsement.

It may be that the document was shown to me on that date stated thereon (15.4.58), but I did not have a copy of it as there stated.

I first received a copy of that document on 1.12.58.

I see the document now shown to me.

Put in and marked Ex.D.7.

20

The endorsement thereon - if the date is 14.5.58 - is not correct because there was no Orderly Room on that day.

If the date thereon is the 10.5.58 I would have had a copy in my possession - because it was given to me on 8.5.58 after my defence was concluded - but it was certainly not shown to me because this witness was not called at all that day. His statement was recorded on 29.4.58.

I see the statement now shown to me.

30

Document put in and marked Ex. D.8.

I see the endorsement thereon.

If the date thereon is 14.5.58 I would have

had a copy in my possession, but I would not have been shown it that day because there were no Orderly Room proceedings on that date.

I see the document now shown to me.

Put in and marked Ex. D.9.

The endorsement thereon is not correct.

I did not have a copy of that document on that date (27.4.58), I was only given a copy thereof on 9.5.58.

10 I see the document now shown to me.

Put in and marked Ex. D.10.

The endorsement thereon is not correct - nor could it possibly be true since I was only given a copy of that document on 9.5.58.

I see the document now shown to me.

Put in and marked as Ex. D.11.

The second part of that endorsement thereon is absolutely untrue since there was no Orderly Room on 11th May, 1958.

20 The Orderly Room Proceedings ended on 10th May.

Q. Was the document ever produced to you during the hearing?

A. It might have been - I cannot remember.

I agree that same applies to all these documents that have been shown to me now.

30 They may have been shown to me during the proceedings but not on the dates shown on the endorsements - with the exception of D.5 which is correct as to date of endorsement as to when shown to me.

Yes, throughout the whole of the Orderly Room proceedings against me I was present - and I had an opportunity to cross-examine all the witnesses.

In the Supreme Court of the Federation of Malaya
In the High Court

Plaintiff's Evidence

No.7

B. Surinder Singh Kanda
10th December 1959
Cross-examination continued

In the Supreme
Court of the
Federation of
Malaya
In the High Court
Plaintiff's
Evidence

No.7

B. Surinder
Singh Kanda
10th December
1959
Cross-
examination
continued

No, I had no objection to Mr. Yates as President of the Board of Inquiry.

Q. Do you attach anything sinister to the fact that Mr. Yates wrote the letter at A.365 with the Appendix A.366?

A. It is possible that he was biased: - and my contention is fortified by the sentence appearing at line 6 of the Appendix - "The Commissioner's Board of Inquiry formed the same opinion."

10

My I.P. in respect of the lottery case was compiled in May 1957; these proceedings were brought against me a year later.

I applied for - and obtained a copy of - the High Court proceedings after my dismissal.

I was not allowed to have a Solicitor before my dismissal - that is the procedure.

RE-EXAMINED:

Re-examination

With regard to some of these documents - Exs. D.5 to D.11 - I was supplied with covering letters; others were just handed to me.

20

A.66 is a covering letter in respect of two of those documents - Exs.D.9 and D.10 - the contents of which appear at pages A.67-69 inclusive.

Yes, the endorsements on those two original documents Exs.D.9 and D.10 state "Shown to Inspector Kanda who has a copy. Initialled by Chief Police Officer. Dated 27.4.58".

I had no such copies on 27.4.58 - they were only sent to me under cover of the Adjudicating Officer's letter dated 8th May - copy of which appears at A.66.

30

The Adjudicating Officer's note at A.66 supports what he says in his written report at A.364 that he handed some of the statements to me "towards the end of the case".

Other documents were handed to me personally

on 8.5.58 by Adjudicating Officer - namely Exs. D.7 and D.8 copies of which appear at pages A.47-49 and 50 respectively.

At A.71 is a further note from Adjudicating Officer dated 9th June to cover delivery to me of further documents - namely D.5 and D.11 (copies of which appear at A.72-73 and A.75-76 respectively).

10 D.6 is endorsed by Adjudicating Officer with statement:

"Shown by me to Inspector Kanda who also has a copy.

Strathairn. 25.4.58."

That is incorrect because the letter at A.130 from Commissioner of Police dated 1.12.58 forwarded to me a copy of that document in answer to a request from my Solicitor dated 23.7.58 (page A.83).

20 The document itself - D.6 - is shown at A.188-190.

The copies of the statements supplied to me by the Defendants were not true copies in that they did not bear the endorsements in red which appear on the originals in the handwriting of the Adjudicating Officer.

Personal enmity between Adjudicating Officer and self.

30 On one instance I was required to attend a meeting of the Inspectors Association, Kuala Lumpur. It was official duty. I applied for permission - which Mr. Strathairn refused. As a result I had to write to the Commissioner of Police which resulted in a Police Signal from the Commissioner of Police to the Chief Police Officer directing that I be released.

Whenever there was a Civics Course I used to give a talk on behalf of the O.C.C.I. - that had been the practice for some time.

Whilst I was speaking Mr. Strathairn said

In the Supreme
Court of the
Federation of
Malaya
In the High Court

Plaintiff's
Evidence

No.7

B. Surinder
Singh Kanda
10th December
1959
Re-
examination
continued

In the Supreme Court of the Federation of Malaya
In the High Court

Plaintiff's Evidence

No.7

B. Surinder Singh Kanda
10th December 1959
Re-examination continued

it was the O.C.C.I.'s duty and not mine to give such talks. After that I gave no further talks.

Recommendation for promotion:

Procedure is for the Chief Police Officer to make recommendations which he submits to Headquarters.

First step is to be called before the Chief Police Officer and staff.

Then required to appear before the Police Service Selection Board. I appeared before the Chief Police Officer - and thereafter before the Police Selections Board.

10

N.B. I point out that these allegations re personal enmity between Plaintiff and Mr. Strathairn - for what they are worth - were never put in examination-in-chief.

Deputy Public Prosecutor:

Don't wish to cross-examine thereon.

5.15 p.m. Adjourned to tomorrow at 11 a.m.

(Signed) I.C.C. RIGBY
JUDGE
10.12.59.

20

11th December, 1959

Civil Suit No.232 of 1959

B. Surinder Singh Kanda ... Plaintiff

v.

The Government of the Federation of Malaya Defendant.

11 a.m. Hearing resumed.
Counsel as before.

30

Jag-Jit Singh:

Plaintiff's Case concluded.

D.W.L. - JAMES RICHARD HAMPSON CHALMERS,
affirmed, states :

Assistant Secretary, Secretariat, Police
Service Commission.

A recommendation was made by the Police
Service Commission to the Minister for Defence
on the Plaintiff's appeal.

I was present throughout the meeting of the
Police Service Commission which considered the
Plaintiff's appeal - as Secretary of the Committee.

As far as I know the complete record of the
Defaulter Report proceedings No.4 of 1958 were
before the Police Service Commission at that
meeting.

Documents D.4 - D.11 were in that file at
that time.

Q. How often has the Police Service Commission
met since Merdeka Day to consider the ap-
pointment of superior police officers?

A. I understand that -

Jag-Jit Singh: Object - hearsay
To Court:

I was appointed as Assistant Secretary to
the Joint Public Services/Police/Service/ and
Judicial and Legal Services Commission in April,
1958.

(N.B.: Merdeka Day - 31.8.57.)

Q. In what capacity did the Police Service Com-
mission act with regard to the appointment
of superior police officers after Merdeka?

A. The Commission was advised that under the
Constitution as it stood the power of appoint-
ment remained with the Commissioner of Police
as it was part of the existing law - but by
administrative arrangement the Commission
selected and appointed probationary Police
Inspectors.

In the Supreme
Court of the
Federation of
Malaya
In the High Court
Defendant's
Evidence -

No.8

J.R.H. Chalmers
Examination
11th December
1959.

10

20

30

In the Supreme Court of the Federation of Malaya In the High Court

Defendant's Evidence

No.8

J.R.H.Chalmers Examination 11th December 1959 continued

I understand all Police Inspectors are appointed on probation in the first instance.

Documents supplied to Plaintiff for purposes of his appeal:

Yes, he did apply for certain documents. Upon advice I authorised the Commissioner of Police to supply him with certain documents.

He was supplied with all the statements marked A.1 and B.1 (as shown on A.131).

Before the Committee hearing the appeal there was also the George Town I.P.

10

This I.P.

Put in as Ex. D.12.

The Committee had also a copy of the Court of Inquiry proceedings and the Defaulter proceedings.

CROSS-EXAMINED:

Cross-Examination

No, I am not a member of the Commission.

I attended the Appeals Committee meeting for the purpose of supplying the documents put before the Committee and to record the minutes and recommendations.

20

The Minister for Defence was the Appellate Authority.

All the papers that were before the Appeal Committee were forwarded to the Minister for Defence for his consideration - together with the recommendation of the Committee.

At the time of the hearing of the appeal the Committee itself did not go through the George Town P. File - paper by paper.

30

The advice the Commission received as to its powers of appointment came from the Legal Department.

Q. Are you aware that since Merdeka Day no appointment of a superior Police Officer has been made by the Commissioner of Police?

A. I am so aware.

Yes, Superior Police Officers have been appointed since Merdeka Day - by the Commission.

The Commission has selected these officers - but by administrative arrangement with the Commissioner of Police.

10

Court:

Q. Who do you say is the Appointing or Dismissing Authority in the case of Superior Police Officers?

A. The Commissioner of Police.

Q. What, then, do you say is the function of the Police Service Commission?

A. As laid down in the Constitution.

Witness continued:

20

Q. Who calls for the applications for appointments of Superior Police Officers?

A. I don't know.

Witness shown copy of Federal Government Gazette dated 3.7.58 - inviting applications for appointment of Police Inspectors.

Applications to be returned to Secretary, Police Service Commission.

Copy put in as Ex. P.13.

30

Witness continued:

All the documents that we were advised to supply to the Appellant - for purposes of his appeal - were in fact supplied to him.

We acted on the advice of the Legal Department.

In the Supreme Court of the Federation of Malaya
In the High Court
Defendant's Evidence

No.8

J.R.H.Chalmers
Cross-examination
11th December 1959
continued

In the Supreme
Court of the
Federation of
Malaya
In the High Court

NO RE-EXAMINATION.

Defendant's
Evidence

To Court: -----

Delay as to hearing of this appeal.

No.8

J.R.H.Chalmers
Cross-
examination
11th December
1959
continued

There was first the question for decision as to who was the correct Appellate Authority and then to decide the manner in which the appeal should be heard.

Q. And that took rather over a year to decide?

A. There was also the question as to what documents would and should be supplied to him. Also the intricacies of the case itself.

10

The Committee itself sat on two days for the hearing of the appeal.

No.9

A.B.Jefferies
Examination
11th December
1959

D.W.2. - ARTHUR BURT JEFFERIES - sworn, states:

Acting Assistant Commissioner, Personnel Branch, Federal Police Headquarters

Yes, I was responsible for forwarding to the Plaintiff the documents that were sent to him.

I instructed my typist to type out all the documents in the Orderly Room proceedings file - the charges, the statements of witnesses, the Investigation Diary of Detective Sergeant Lo Thean Guan.

20

Court:

Q. What about the two diaries of the witness A.5 (see page A.131)?

A. I supplied such documents as I was advised to supply in the letter I received from the Police Service Commission.

Question repeated:

A. I cannot remember whether I supplied these two diaries. -----

30

Jag-Jit Singh:

May witness refresh his memory by looking at his letter - a copy of which appears at A.130?

Witness after looking at the letter:

Witness continued:

No, I did not supply those two diaries.

I checked the typed copies before sending them.

10 In the Defaulter proceedings some of the statements were in manuscript and some were typed.

Q. It transpires that one complete page - in manuscript - of Plaintiff's statement was not supplied, can you explain why?

A. An oversight in checking on part of the typist and myself.

Section 6(2) of Police Ordinance.

I do not know of any written delegation.

20 It is normal practice in Police Headquarters for the Deputy Commissioner and Senior Assistant Commissioner to use powers of delegation.

I have no direct knowledge in respect of any specific delegation in this particular case.

30 Normal procedure in disciplinary appeals to the Commissioner of Police for the papers to be examined by a Senior Assistant Commissioner and the Deputy Commissioner before being put before the Commissioner for decision.

This is what happened in this case.

The Commissioner of Police, Deputy Commissioner of Police and Senior Assistant Commissioner at this time were Mr. Carbonell, Mr. Hindmarsh and Mr. Yates. All these officers have

In the Supreme Court of the Federation of Malaya
In the High Court

Defendant's Evidence

No.9

A.B.Jefferies
Examination
11th December
1959
continued

In the Supreme Court of the Federation of Malaya
In the High Court

Defendant's Evidence

No.9

A.B.Jefferies
Examination
11th December
1959
continued

Cross-examination

now left on Malayanisation. There has been no relinquishment by the Commissioner of his powers under the Police Ordinance, 1952, of his powers of appointment and dismissal of superior police officers.

CROSS-EXAMINED:

Q. So that if the Commissioner of Police so desires, he can appoint a superior police officer today?

A. Yes.

10

Q. Has the Commissioner of Police ever made any such appointment after 31.8.57?

A. No.

Q. And all such appointments have in fact been made by the Police Service Commission?

A. Yes.

Q. If, for example, 20 inspectors are to be appointed, who decides the final figure?

A. Number of appointments depends on number of vacancies. The Commissioner of Police decides this.

20

He writes to the Police Service Commission and asks them to advertise for applications - and to arrange the selection of suitable applicants.

A Board convened by the Police Service Commission - with Police Officers on the Board - then interviews the applicants - and selects them - and appoints them.

In 1958 there was no police representative sitting as a member of the Police Service Commission.

30

I have never myself sat as an adviser when the Police Service Commission appoints Police Inspectors.

The advertised applications for vacancies for filling appointments as Police Inspectors contain certain requirements - as to height,

age and other matters - including requirement they must be Federal Citizens.

Police Ordinance - Section 6(2) - provides for delegation by the Commissioner of Police of his powers.

Q. Can he delegate his power of dismissal?
A. He can.

Witness referred to Commissioner's Standing Orders - Part A.207 - Rule 9.

10 I still say the Commissioner of Police has power to delegate his powers of dismissal - but he has not done so. He could do so by repealing this Order.

Witness referred to Police Ordinance, 1952, Section 45(1) read in conjunction with the First Schedule.

I agree that only the Commissioner of Police has power to dismiss a superior police officer.

20 I agree that Commissioner's Standing Orders are made under the powers conferred on him by Section 82 of the Ordinance.

Looking at page A.131, I agree that none of the documents under the Exhibits column were supplied to the Plaintiff with the exception of the "Original I.D. of Witness A.7".

I agree that Plaintiff did ask for the documents in that Exhibits column.

30 I was instructed that he could have a copy of the charges - copies of the statements of witnesses - and copy of the Investigation Diary of witness A.7.

No, I did not check the typed copies from the originals. The Plaintiff did appear before the Police Service Commission for consideration for promotion. He was not promoted.

In the Supreme Court of the Federation of Malaya
In the High Court

Defendant's Evidence

No.9

A.B.Jefferies
Cross-examination
11th December
1959
continued

In the Supreme
Court of the
Federation of
Malaya
In the High Court
Defendant's
Evidence

NO RE-EXAMINATION:

1.10 p.m. Adjourned to 2.30 p.m.

(Signed) I.C.C. RIGBY
JUDGE
11.12.59.

2.30 p.m. Hearing resumed.

No.10

J.B.Ratnam
Examination
11th December
1959

D.W.3. JOHN PAUL RATNAM - affirmed, states in
English :

Confidential typist, Federal Police Head-
quarters, Kuala Lumpur.

10

I see this file Defaulter Report No.4 of
1958.

Mr. Jefferies passed the file to me and told
me to make copies of the whole file. I did so.

Some statements in that file were both in
manuscript and typed. I used the typewritten
copies.

No, I did not know that as a result of copy-
ing from one of the typewritten copies I omitted
a full page from the manuscript original of the
Plaintiff's statement in that file.

20

CROSS-EXAMINED:

Cross-
examination

I was told to make copies of the whole con-
tents of the file.

Yes, I typed out copies of the whole file
as far as I remember.

I have been a Confidential Typist since
1948.

It has never been suggested to me till now - in Court - that I omitted typing a page from the Plaintiff's statement in that file.

I did not make copies of any of the Exhibits in that file.

No, I did not check the statements with D.W.2. at any time.

10

I still say I made copies of all the documents in the file. Defaulter Report File No.4 (and No.5) of 1958 now put in and marked Ex. D.14.

It was last Tuesday - at 12 noon - that I was first told I would be required to give evidence here. D.W.2. told me.

NO RE-EXAMINATION.

D.W.4. - ROBERT WILLIAM STRATHAIRN - sworn, states:-

Chief Police Officer, Kedah and Perlis.

20

I was the Adjudicating Officer in Defaulter Report Proceedings Nos.4 and 5 of 1958 concerning the Plaintiff.

As far as I remember proceedings commenced on 16.4.58.

Witness permitted to refresh memory by looking at Diary made at the time.

States:

30

I recorded the evidence of two witnesses on 22.4.58 - a further three witnesses on 25.4.58 - one witness on 30.4.58 - one witness on 2.5.58 - one witness on 5.5.58.

In the Supreme Court of the Federation of Malaya
~~In the High Court~~
Defendant's Evidence

No.10

J.B.Ratnam
Cross-examination
11th December 1959
continued

No.11

H.W.Strathairn
Examination
11th December 1959

In the Supreme Court of the Federation of Malaya
In the High Court

Defendant's Evidence

No.11

H.W.Strathairn
Examination
11th December
1959
continued

These entries are not made in the Diary proper - but in the Reminder column at the side.

To Court:

Yes, a diary of intended events may not necessarily have occurred on those dates.

Witness continued:

D.14 is the original file of Defaulter Report Proceedings Nos.4 and 5 of 1958.

Further evidence was recorded from the Plaintiff on 7.5.58 at 1700 hours.

10

Ex.D.4 - this was recorded by me on 10.5.58.

It is a form of my summing-up and the statement made by Plaintiff in extenuation after I had informed him that I found him guilty of the offence charged.

After finding him guilty I asked him if he wished to say anything and I recorded thereon what he said.

As far as I am aware this file - with D.4. thereon - was sent by me to Federal Police Headquarters on, I think, 14.6.58 - and I did not see it again until it was shown to me 4-6 weeks ago by the Deputy Public Prosecutor.

20

I deny any suggestion that it was put into the file by me at any later stage.

Exs. D.5 - D.10:

D.5 - (A.72-73) is the statement recorded by the Plaintiff on 29.5.57 from Loh Meow Kooi.

It is shown on A.131 amongst Exhibits as "Original statement of witness A.10, D.5".

30

It was shown to the Plaintiff at the trial before me - on 11.6.58.

D.6 - This is the Investigation Diary of Detective Sergeant 356 Lo Thean Guan.

This is endorsed by me:

"Shown by me to Police Inspector Kanda who also has a copy. 25.4.58."

That was the date I produced it to him.

He was supplied with a copy of this - as far as I remember - about 7-10 days before the hearing on 16.4.58. I cannot recollect who supplied it - possibly Mr. Kay Kim Seng, the O.C.C.I.

(Copy of this Investigation Diary appears at A.188).

D.7 - This is the statement of Koe Ah Huat which was recorded by the Plaintiff on 4.6.57.

It is shown in the List of Exhibits (A.131) as :-

"Original statement of Witness A.3 - D.7".

(Copy of this statement appears at A.47.)

This original statement is also endorsed by me:-

"Shown by me to Police Inspector Kanda who already has a copy. 1.5.58". (I think).

Q. 1.5.58 not a day on which Orderly Room proceedings continued. Can you explain how it was shown to him on that day?

A. On looking further at the date it appears to me it was 14.5.58.

Q. On that date you were functus officio. Can you explain how or why it was shown to him on that day?

A. I know it was shown to him at the proceedings against him because I can remember cross-examination on the statement.

It may be that I omitted to date it at the

In the Supreme Court of the Federation of Malaya
In the High Court
Defendant's Evidence

No.11

H.W.Strathairn
Examination
11th December
1959
continued

10

20

30

In the Supreme
Court of the
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Malaya
In the High Court
Defendant's
Evidence

No.11

H.W.Strathairn
Examination
11th December
1959
continued

time and prior to sending it with other documents to the Commissioner of Police, I did so on that date.

This all happened 20 months ago - my memory vague on this point.

D.9 is the original Investigation Diary of Police Inspector Ng Hoon Fuan.

It is shown on the List of Exhibits (A.131) under :-

"First I.D. of witness A.5 - D.9",

10

(N.B. Copy of this document appears at A.67-68).

This is also endorsed by me:-

"Shown to Police Inspector Kanda who has a copy. 27.4.58".

I have not an exact record of the sittings.

Looking at the date again, it could be 22.4.58 - which is the same date as endorsed by me on Ex. D.10.

Ex.D.10 - Looking at this document I cannot say whose diary it is.

20

Looking at A.131 I see now that it was the second Investigation Diary of Police Inspector Ng Hoong Fuan.

(N.B. Copy of Ex.D.10 is shown at A.69).

It is also endorsed by me :-

"Shown by me to Police Inspector Kanda who already has a copy. 22.4.58".

I think it must be that this original document was produced to me at the Defaulter Report Proceedings on that date and I then endorsed it as shown.

30

Plaintiff had been supplied with a copy of that document some time before the hearing.

Ex.D.11 - This is the original statement of Ang Keng Cheow which was recorded by the Plaintiff on 3.6.57.

It is shown on List of Exhibits (A.131) under:-

"Statement of witness A.11 - D.11".

(N.B. Copy of this original statement is at A.56).

This document endorsed by me:-

10 "Removed by me from George Town I.P. 1946/57 and produced to Inspector Kanda.

11.6.58"

There were a bundle of I.P.s - about 10-12.

I am afraid I did not even see them.

Jag-Jit Singh: Ask Court to look at the endorsement.

20 Court looks at endorsement and passes it back to witness.

Witness continued:

Yes, I agree it looks like 11.5.58.

I think this date must be incorrect - I had no occasion to give Plaintiff this statement on 11.5.58, because at that time I had no intention of calling this witness.

30 A.362 is the covering letter under which I forwarded the File Defaulter Report Nos.4 and 5 of 1958 to the Commissioner of Police with my findings and recommendations, and with the synopsis required under Commissioner's Standing Orders.

Page A.364 - This case, as far as my memory

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H.W.Strathairn
Examination
11th December
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continued

In the Supreme
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H.W.Strathairn
Examination
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1959
continued

serves, was based on the findings of a Court of Inquiry which was held by Senior Assistant Commissioner Mr. Yates - C.I.D. - towards the end of 1957. I was not present in Penang at that time.

As a result of the findings of that Court I was instructed - when I took over as Acting Chief Police Officer - to charge the Plaintiff under Orderly Room Proceedings.

The evidence on which this charge was based arose out of certain facts established in the Inquiry. 10

The Plaintiff was given copies of all those statements on which the charge was based. This was in accordance with Commissioner's Standing Orders.

I recollect that Plaintiff asked for the complete Investigation Papers, and as these are classified documents I obtained the advice of Federal Police Headquarters and was told to give only such documents as were necessary for the charge. 20

I note that from my letter - at A.364 - I gave Plaintiff certain statements from I.P. 1025/57, and I can recollect discussing this point with Federal Police Headquarters and being advised to do as I thought fit in the interests of justice.

The words at A.364 - "towards the end of the case".

As appears from that letter itself - later, in the course of the case, "I realised that certain evidence had to be proved" and that was why I gave the Plaintiff certain copies of statements towards the end of the case. 30

In that letter itself - at A.363(n) - I refer to "my brief summing-up and Inspector Kanda's final statement".

In answer to A.362 I received the letter A.365 - from the Commissioner signed by Mr. Yates - enclosing the Appendix at A.366. 40

I took the action as directed in paragraph 4 of A.365.

Q. Was this the regular procedure in such cases?

A. I understood so. It was the first case I had ever experienced.

Yes, I then wrote the letter at A.368.

I agree this Form Pol. D.9A (Ex.D.14) - (copy at A.131) was re-written by me.

10 As I recollect, I had been instructed to record the statements of the two witnesses A.10 and A.11 and I think I was told to include in the List of Exhibits the Investigation Diaries of certain witnesses. I can remember that the space provided for the witnesses and exhibits was already full up on the Defaulter Report that I was using at that time and instead of scoring out the original entries and trying to squeeze in the last two witnesses, I decided to make a neater job and therefore instructed that the
20 Pol.9A should be re-typed on my draft.

Q. What was the date on the original copy of the Pol.9A?

A. 10th May, 1958.

As far as I remember, I signed the new copy on 11th June, 1958.

All I can say is that in preparing the new form Pol.9A I took down the list of witnesses as they appeared on the original List, adding thereto A.10 and A.11.

30 I think that in copying it down I must have inadvertently written 10th May, 1958 instead of 11th June, 1958.

Q. Did you make any re-arrangement of the order of the witnesses?

A. No, as far as I remember the List was as it was on the original Pol.9A.

D.S.P. Tan's evidence was recorded by me on 16.4.58. He was the first witness.

40 Q. Can you then explain why he is shown as A.8 instead of A.1?

In the Supreme Court of the Federation of Malaya
In the High Court
Defendant's Evidence

No.11

H.W.Strathairn
Examination
11th December
1959
continued

In the Supreme Court of the Federation of Malaya
In the High Court
Defendant's Evidence

No.11

H.W.Strathairn
Examination
11th December
1959
continued

A. In preparing the Pol.9A I remember I placed the witnesses and gave them a number in chronological order. This I did for the convenience of the Commissioner of Police who would have to examine these rather lengthy proceedings.

To Court:

I mean I tried to follow the sequence of events and put the witnesses in that order - not in the order in which they gave evidence before me.

10

Witness continued:

Q. The exhibits D.5 to D.10 - were they enumerated on the original Pol.9A?

A. I think they were - with the exception of the fact that initially copies of the documents which were used for submission to Headquarters - i.e. copies of the Board of Inquiry exhibits - were sent and included in the original Pol.9A.

Answer read back to witness.

20

I mean that copies of those documents were included in the original Pol.9A sent to Kuala Lumpur; the originals were retained by me.

I think that I was instructed to include the originals in the Pol.9A when returning it to Kuala Lumpur the second time.

I think the original statement of A.10 must not have been sent to Kuala Lumpur after the hearing of 10th May.

Looking again at the List of Exhibits as shown at A.131.

30

Exs. D.1-4 inclusive were forwarded to Kuala Lumpur with my original Pol.9A.

I don't think that D.5 was submitted.

D.6-10 inclusive - I think that not the originals but only copies thereof were submitted to Kuala Lumpur then.

D.11 at that time had not been considered.

I would like to say that at this late stage I cannot be sure about D.5 - it may well have been forwarded, in original, at that time.

10 Q. On 10.5.58 you told accused you found him guilty; can you say whether you told him what recommendation you proposed to make?
A. Very difficult to remember at this date.

I think I told him that I would forward the case to be dealt with by the Commissioner for his decision, as any action I might be empowered to take would not be fitting in such a serious case.

I told him that in respect of the original charge in Defaulter Report No.4 of 1958.

20 The statement he then made was quite definitely made in extenuation of the original charge.

File D.14 (Defaulter Report Nos.4 and 5 of 1958) contains both original manuscript and type-written copies - that was for the benefit of the Commissioner.

A page of the original statement made by the Plaintiff which I recorded in manuscript was apparently not typed out.

I assume it was overlooked by the typist.

30 As regards the exhibit D.4 - my summing-up - again I cannot explain why a typewritten copy was not made of this.

As I finished the statements, so I passed them to the typist for typing. It is possible that either I did not pass this document, or the typist overlooked it.

The witnesses A.10 and A.11 as shown on

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H.W.Strathairn
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continued

In the Supreme Court of the Federation of Malaya In the High Court Defendant's Evidence

page A.131. The evidence of those two witnesses was taken on 11.6.58.

Solicitors are not permitted right of audience in Orderly Room proceedings.

No.11

5.10 p.m. Adjourned to 9.30 a.m. tomorrow.

H.W.Strathairn Examination 11th December 1959 continued

(Signed) I.C.C. RIGBY JUDGE 11th December, 1959.

Interpolations by Court. 12th December 1959.

12th December, 1959.

CIVIL SUIT NO.232 of 1959

10

B. Surinder Singh Kanda ... Plaintiff vs. The Government of the Federation of Malaya ... Defendant

9.30 a.m. Hearing resumed. Counsel as before.

Court to Jag-Jit Singh:

Plaintiff's case based on two grounds:-

- (1) By virtue of the Constitution Commissioner of Police no longer has the powers of appointment and dismissal of superior police officers which he formerly had under the Police Ordinance, 1952; and (2) Plaintiff not given any proper opportunity to defend himself against the proceedings (proceedings to include adequate opportunity of presenting his appeal).

20.

Query whether ground (2) not a matter

for High Court proceedings by way of certiorari rather than a civil action?

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In the High Court

Jag-Jit Singh:

Will satisfy Court - by reference to Indian authorities - that Plaintiff has a right of action as well as, if necessary, a remedy by way of certiorari.

Interpolations
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continued

Court to Legal Adviser:

10

Am of the opinion that in the interests of justice the Findings of the Board of Inquiry ought to be made available to the Court - and to the Plaintiff - and privilege waived thereon. Suggest claim to privilege thereon should be waived.

- (a) Board of Inquiry presided over by Mr. Yates.
- (b) Board of Inquiry made certain Findings in direct consequence of which the specific disciplinary charges against the accused were brought.
- (c) Disciplinary charges brought and accused convicted thereon.
- (d) The conviction, record, and recommendation forwarded by Adjudicating Officer to Commissioner of Police (attention Mr. Hindmarsh).
- (e) The papers then "vetted" by Mr. Yates - the former President of Board of Inquiry - as result of which these charges had been brought - and sent back to the Adjudicating Officer for further evidence to be taken.

20

30

In my view, the Findings of the Board of Inquiry - which gave rise to the disciplinary proceedings - should be available.

Legal Adviser:

Must be some misunderstanding - they have

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In the High Court

always been available - and no privilege claimed thereon.

Court:

Interpolations by Court
12th December 1959
continued

That is certainly not correct. They were referred to yesterday by the witness Mr. Chalmers and the Legal Adviser, then expressly said that that was one of the documents on which privilege was claimed. It was for that reason alone that the file was not then put in as an exhibit. It is my clear impression that both in Court - and throughout earlier proceedings in Chambers - privilege has consistently been claimed in respect of the Board of Inquiry File and the Findings thereon.

10

(Signed) I.C. RIGBY
JUDGE
12.12.59.

Defendant's Evidence

D.W.4 - H.W. STRATHAIRM - recalled - reminded on former affirmation:

20

No.11

CROSS-EXAMINED:

H.W.Strathairn Cross-examination
12th December 1959.

I took over as Acting Chief Police Officer, Penang, on 25.1.58.

Before that I was in charge of Criminal Records Office and Police Photographic Branch, Kuala Lumpur.

I was not aware - prior to the hearing of the Defaulter Report proceedings - that other officers were jealous of him.

Allegations of jealousy from other officers were made by him during the proceedings - and also by Mr.Sykes during the Board of Inquiry.

30

Yes, I had read the statements and findings of the Board of Inquiry before I held the disciplinary proceedings.

Yes, I agree D.S.P. Tan Chin Teik was one of the principal witnesses against Plaintiff.

Q. Are you aware that at that time there was an inquiry concerning D.S.P. Tan in connection with charges of corruption?

A. I cannot remember.

I recorded D.S.P. Tan's statement on 16.4.58 - I say that because I have in my diary a note of another matter and I recall that I took D.S.P. Tan's statement on that same day.

Looking at D.S.P. Tan's statement in the Defaulter Report Proceedings it does appear that, unfortunately, I made no record on that statement - either at the beginning or the end - as to date on which I recorded the statement.

Q. Would it surprise you to hear that D.S.P. Tan left Penang for Kelantan on 16th April?

A. Would not surprise me at all. He gave his statement in the morning and he left for Kelantan on the afternoon plane.

Q. You stated you recorded the evidence of one prosecution witness on 5.5.58; who was that?

A. I recorded the Plaintiff's evidence on that day. D.14 (Defaulter Report Proceedings Nos.4 and 5 of 1958.)

Yes, I said yesterday I recorded further evidence from the Plaintiff on 7.5.58 at 17.00 hours.

Further evidence I recorded is shown at A.378.

The rest of the proceedings as recorded on A.377 was made on 5.5.58.

(N.B. It is quite clear - looking at the original document - that the first part of A.377 appearing in the bundle of documents, has been taken out of its context and should form part of the Plaintiff's statement in the Orderly Room Proceedings.)

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H.W.Strathairn
Cross-examination
12th December 1959
continued

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H.W.Strathairn
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continued

I do not know why this page of the original document was not typed out by my typist.

Q. It was your duty to read the statement back to the accused in the Orderly Room Proceedings?

A. Yes, it is the normal procedure.

Q. Could you say whether the cross-examination of the witnesses was read over to the accused?

A. There is only a record of the actual statements in chief being read over to the accused, but I am perfectly certain that I read over everything and I so certified it on Form Pol.9A.

10

No, I agree I did not so certify at the bottom of the Statement.

Yes, I found accused guilty of the offence charged.

Q. Did you award any punishment on 10.5.58?

A. As far as I remember, I awarded a severe reprimand in Defaulter Report No.5 of 1958.

20

Q. And did you then ask the Plaintiff to make any statement in extenuation of that offence?

A. I cannot recollect.

I agree that accused objected to being tried on the two joint charges.

Yes, I agree I over-ruled his objection.

Yes, I agree Mr. Yates by his letter (A.366) was inclined to agree that accused's objection was well founded.

30

Q. Despite that fact your award of a severe reprimand was confirmed by the Commissioner?

A. It was not necessary for my award of a severe reprimand to be confirmed by the Commissioner.

Witness referred to A.136.

(Confirmation of punishment of severe reprimand confirmed by Commissioner on 27.6.58.)

Witness continued:

First I have heard of that - I was out of the country on 27.6.58.

To Court:

Yes, as far as I was aware, it was not necessary for my award to be confirmed by the Commissioner.

Witness continued:

10

Q. Put it to you that you expressly forwarded your award of severe reprimand to the Commissioner for confirmation?

Witness referred to his letter at A.362.

A. It would now appear that I did do so.

In my view the Deputy Commissioner has powers of dismissal by virtue of Section 6(2) of the Police Ordinance.

20

As I recollect the accused made his statement in extenuation in answer to the major charge. (A.377). Looking at the statement again, it is quite definite that it was made in answer to the second charge since he is asked if he wishes to cross-examine Police Inspector Ng on his two diaries.

As far as I am aware the two diaries were not referred to in the second charge against the accused.

Q. But both charges had been heard and dealt with before that date - the 10th May?

A. That is so.

30

I agree my summing-up is short.

Not required by law or regulation to make a detailed summing-up.

In arriving at that conclusion I bore in

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mind the fact that several of the prosecution officers had earlier given false evidence.

Q. Did you tell him what punishment you proposed?

A. As far as I recollect I told him that I was forwarding the case to the Commissioner since the punishment was too serious for me to deal with.

Yes, the letter of accused at A.7C.

I must have read it before forwarding it to the Commissioner.

10

The words "on the first charge judgment is reserved" must mean that judgment had not yet been given.

I cannot say what view I then took of those words.

It is possible that I myself took the Defaulter Report Proceedings to Kuala Lumpur.

Yes, I agree that after the 10th May I took further evidence.

I cannot say whether - before the papers were sent back to me - they had yet been submitted to and seen by the Commissioner.

20

I agree - judging by contents of A.366, paragraph 2 - they had not then been seen by the Commissioner.

I agree I had addressed the papers to the Commissioner - for attention of Mr.Hindmarsh.

To Court:

Q. Why did you send the Defaulter Report proceed-
to the Commissioner of Police - attention Mr.
Hindmarsh?

30

A. Mr.Hindmarsh was the Deputy Commissioner.
As far as I remember the instructions to
charge the Plaintiff were given to me by Mr.
Hindmarsh.

Q. In writing?

A. I think so.

I replied to him because it is the normal practice in the Force to deal with the officer who has originated the correspondence - all coming under the general heading "Commissioner of Police".

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Witness continued:

10 Q. You were asked by Mr.Yates, in his letter and enclosure at A.365, to tie up the loose ends of the case, and then send it back to him?

A. Something like that.

Q. Having re-opened the Proceedings, before finally terminating it, was the accused given a further opportunity to make a statement in extenuation?

20 A. I have given the matter very considerable thought and I recollect that the case was completed on 10th May and after the case was returned to me Mr.Yates agreed that there was ample evidence on which to find the accused guilty. I think I am correct in saying - see A.366(2)(f) - that the two persons who had in fact been arrested by the accused in the original forged notes case should be called in the proceedings - otherwise there might be a presumption that I had deliberately omitted evidence which was unfavourable to the accused.

30 I mean this to mean that the Plaintiff might submit an appeal suggesting that I had deliberately omitted evidence that was favourable to him.

Court:

Q. How could it be suggested that the evidence of the two persons, whom the accused had himself arrested and charged, be favourable to the accused?

A. I cannot understand.

I was most surprised when I received the instruction.

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In considering which witnesses should be called at the Defaulter Report Proceedings I had deliberately omitted calling these two witnesses since I realised that their evidence might be very prejudicial to the accused.

Defendant's Evidence

Witness continued:

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H.W.Strathairn
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continued

After recording their evidence I remember saying words to the effect that this evidence could in no way alter my previous decision - and with this the Plaintiff agreed.

10

I did not record any further statement from the Plaintiff.

- Q. My instructions are that that is absolutely untrue, and I shall prove it by documentary evidence?
- A. My recollection is that that is what actually happened.

Court:

Is this relevant?

The Adjudicating Officer was then functus officio - he had already convicted.

20

He was simply directed to take further evidence.

He could not alter his decision finding accused guilty?

Jag-Jit Singh:

My submission is that on the additional evidence the Commissioner of Police could have come to a decision as regards a lesser punishment and therefore the Adjudicating Officer should have asked the accused, after recording the additional evidence, whether he wished to make a further statement in mitigation.

30

Witness continued:

Q. Did you satisfy yourself that the accused knew the nature and effect of the further proceedings?

A. Yes. In fact I recollect that accused was considerably surprised at having the additional evidence of these two obviously adverse witnesses recorded.

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Jag-Jit Singh:

10 Refer to correspondence - A.220, 223, and
271.

H.W.Strathairn
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Q. Letter at A.271. Can you explain paragraph 5?

A. No - except that I did tell the Legal Adviser that I had not recorded any statement about this. Paragraph 5 must be a misunderstanding.

Yes, Mr. Massie did question me before that letter was written.

20 Witness referred to his evidence yesterday:-

"The evidence on which this charge was based arose out of certain facts established in the Inquiry".

and also referred to the words in his summing-up as Adjudicating Officer (see A.377):-

"I rely upon certain facts which stand out clearly".

Q. Were those "certain facts" upon which you relied for conviction the "certain facts established in the Inquiry"?

30 A. Obviously not. The evidence upon which I relied is indicated in my letter A.362.

I agree that the documents D.5 to D.11 as shown on Pol.9A (copy at A.131) were added after the accused had made his statement in extenuation (which appears at A.377).

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H.W.Strathairn
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Q. Was there anything to prevent you writing a further Pol.9A as an addition to the original sheet?

A. Nothing at all.

Q. Was the original the same as appears at A.131?

A. Oh, no - there was the inclusion of the original statements and Investigation Diaries as shown under the list of exhibits and also the statements of A.10 and A.11 as shown under the heading "Prosecution". Otherwise, as far as I remember, the rest was the same.

10

Witness referred to his letter at A.363, paragraph (k).

Q. In the original there was a DE2, which is not shown in the second Pol.9A?

A. I think DE.2 was something to do with the original Court of Inquiry.

DE.2 is shown in the new Pol.9A under D.6.

It is also Ex.D.6 in this case.

I think that in the original Court of Inquiry this statement was marked "DE.2" and was signed by the President of the Court.

20

It was extracted from that Court of Inquiry file and produced as an exhibit before me.

I left it as "DE.2" and also re-marked it "D.6" in my new Pol.9A for the purpose of keeping the exhibits - as I had kept the witnesses - in chronological order, for the benefit of the Commissioner.

Q. What was D.6 in the original Pol.9A?

A. The two diaries - as shown as D.9 and D.10 in the new Pol.9A at A.131.

30

The charges as framed - (see A.133).

I agree that the complete George Town I/P.1025/57 was not produced as an exhibit in the Defaulter Report Proceedings No.4 of 1958 against the accused, but certain documents therefrom were.

Q. The complete I.P. was at no time made an exhibit in this case and at no time given to the accused?

A. I think that is correct.

Q. And whatever documents that were given to the accused, were given towards the end of the case?

A. Oh, no.

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10

Witness referred to part of his letter at A.364.

H.W.Strathairn
Cross-examination
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In the Court of Inquiry file were certain documents from the I.P. which, as far as I recollect, were extracted and used in the Default-er Report Proceedings.

Yes, I agree that towards the end of the case against the accused I realised that for purposes of his defence the accused should be given further copies of certain statements.

20

After I had recorded his statement on 5th May, in reading through the whole case, I realised that he ought to be furnished with further copies of statements and I therefore recalled him on 7th May, gave him the further statements and took an additional statement from him. Those additional statements I think I gave to him before recording his further statements, but I cannot remember how long before.

30

Q. Suggest your memory failing because you sent copies of the diary of Police Inspector Ng and an un-named diary - Ex.D.9 and D.10 - to the accused on 8th May, 1958 through O.C.C.I. - under cover of the letter I now produce to you?

Covering letter put in as Ex.D.16.

A. I agree - I see now that is correct.

But that covering letter states if the accused wished to recall the witnesses he was at liberty to do so.

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- Q. Did you then supply him with further documents after that?
- A. I have no recollection.
- Q. Would this covering letter and these documents refresh your memory?

Witness shown a covering letter dated 9th June and two statements (Exs.D.5 and D.11 - copies of which appear at pages A.72-75).

- A. Yes, that is correct - I did supply him with copies of these two statements - in respect of witnesses I had not yet taken.

10

Covering letter put in as Ex.D.17.

A.9 - my letter to accused informing him Defaulter Report Proceedings would be taken against him.

A.11 - is his request to me for documents.

According to the record I supplied him with documents on 14th April.

Inquiry started on 16th April.

- Q. So that the statement you made yesterday that the accused was supplied with certain statements about 7-10 days before the hearing on 16.4.58 cannot possibly be correct?

20

- A. I agree - my statement cannot be correct.

I agree that some of the endorsements I have put on certain statements were not made on the days I in fact showed those statements to the accused.

- Q. Can you give any reason why George Town I.P. 1025/57 was not before you in toto - and/or

30

why a copy of it was not supplied to the accused?

A. Yes. I was concerned only with the documents relating to the charge. These were the documents produced before the Board of Inquiry. Therefore, I gave the accused only copies of the documents produced before the I.P.

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NO RE-EXAMINATION

H.W.Strathairn
Cross-examination
12th December 1959
continued

10 1.10 p.m.

Massie: Called no further witnesses.

Defence concluded.

Adjourned to 12.1.60 for Final Addresses, at 10 a.m.

(Signed) I.C.C. RIGBY
JUDGE.
12th December, 1959.

12th January, 1960
CIVIL SUIT NO.232 of 1959

No.12

20 B. Surinder Singh Kanda ... Plaintiff
v.
The Government of the Federation of Malaya ... Defendant

Final Addresses of Counsel.
12th January 1960.

10 a.m. Hearing resumed.

Counsel as before.

Jag-Jit Singh:

Refer to page 35 of typewritten record - evidence of Mr.Strathairn as to letter

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of instructions to him to hold the disciplinary proceedings.

That letter has now been disclosed.

Ask for original to go in as an exhibit.

Final Addresses
of Counsel.
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continued

Massie: No objection.

Original letter dated 12.3.58 - signed by Mr. Yates - to Mr. H.W. Strathairn - put in as Exhibit P.18.

Jag-Jit Singh:

In opening case I stated Plaintiff was a Division II officer.

10

Did not prove it.

Massie:

Admit Plaintiff a Division II officer.

Massie:

Plaintiff's contention not given a reasonable opportunity of being heard.

Submit Plaintiff has failed to establish a right of action - and Writ of Certiorari the proper and only remedy.

20

Cooper v. Wilson ((1937) 2 K.B., 309 at 359).

Issue affecting authority's right to dismiss - as distinct from contractual rights.

If, in law, a right of action, then submit in fact Plaintiff has failed to establish he had no reasonable opportunity of being heard - both during original proceedings and for purpose of his appeal.

No prejudice by reason of fact Mr. Yates the Chairman at the Inquiry and also the medium through which instructions given to Mr. Strathairn to hold the Inquiry and the letter written after the Inquiry to Mr. Strathairn for purpose of tidying up the proceedings.

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10

Submit evidence of Adjudicating Officer confirms that the statement in extenuation was properly made and duly included in the proceedings when despatched by the Adjudicating Officer to the Commissioner of Police.

Final Addresses
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continued

Fact that Plaintiff given an opportunity of being heard puts beyond doubt fact that he was given a reasonable opportunity to be heard as to his dismissal as the punishment proposed to be recommended.

Therefore High Commissioner for India v. I.M.Lall's case distinguishable.

20

Supplying of documentary evidence to Plaintiff for purpose of defaulter proceedings and for purpose of his appeal.

As to argument he was not given an opportunity to be heard by Commissioner of Police in breach of Commissioner's Standing Orders, Part A.2C7. This an administrative order as distinct from a rule made under an Ordinance.

Since he was the order making authority he was entitled to disregard his own order.

30

In any event, Plaintiff not prejudiced - since he had told Adjudicating Officer he had nothing more to say. Submit an officer such as Plaintiff can be dismissed notwithstanding failure of dismissing authority to observe the procedure prescribed by rules.

Venkata Rao v. Secretary of State for India (1937, L.C., (P.C.) 248).

40

As to supplying of documents for purposes of his appeal. Submit he was supplied with these as a concession and not as of right.

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Submit supplied with sufficient documents to enable him to be fully heard on appeal by his Counsel.

Plaintiff himself not heard on appeal - in accordance with discretion vested in appellate authority under Police Regulations 1952 - Regulation 15(3). In any event submit plaintiff's pleadings limit him to argument that not given a reasonable opportunity to be heard at the defaulter proceedings.

10

As to method of dismissal.

Submit Police Ordinance and Regulations do cover the method of dismissal.

Refer to Regulations 4, 15 and 16 of Police Regulations, 1952 and Section 45 of Police Ordinance.

Specific provision therein.

Submit Public Officers (Conduct of Discipline) Regulations inapplicable.

Police Ordinance, Section 22. Rely on that.

20

As to power of Commissioner of Police to dismiss under present Constitution.

Article 135 (1) of Constitution.

Submit this must obviously refer to the legal and constitutional powers to appoint and not to any de facto powers.

Article 162(4).

Article 140(1).

Article 144(1) - "subject to the provisions of any existing law".

30

Submit that no modification of existing law can be necessary or expedient for purpose of bringing it into accord with the Provisions of Article 144(1). Therefore submit Article 162 (4) does not apply to existing laws affecting appointment, etc. of public officers.

Therefore no question of applying any such existing law by modification under article 162(6) can arise.

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10 Submit, further, that even if it is a fact that Section 9 of the Police Ordinance required to be modified to bring it into accordance with Article 144(1) - that would make no difference to the legal position of the Commissioner of Police as an appointing authority under Section 9 - which section is expressly saved by opening words of Article 144(1).

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Submit that Court has no jurisdiction to grant prayers as asked for in paragraph 14 of his Statement of Claim on grounds :-

- (1) that terms and conditions of civil servants cannot be enforced in the Courts.

Constitution Law by Wade & Phillips,
5th edition, pages 70, 177 and 334.

20 Rodwell v. Thomas & ors. ((1944) 1,
K.B., 596).

Leaman v. The King ((1920) 3, K.B., 663)

Kynaston v. Attorney-General ((1932-33)
49, T.L.R. 300)

Robertson's Civil Proceedings by and
against the Crown 1908 page 355.

Shenton v. Smith (1895, A.C. 229)

Above rule applied to Colonial Govern-
ments.

- 30 (2) Court has no jurisdiction because Police Service Commission derives its functions from the Royal Prerogative and is independent of control.

Wade & Phillips, page 179.

- (3) Mandamus will not lie against the Crown or its agents.

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Halsbury's Law of England, 3rd edition, Volume II, page 98.

Reg. v. Secretary of State for War ((1891) 2, Q.B., 326, at 334).

Reg. v. Lords Commissioners of the Treasury, (1872, L.R., 2, Q.B., 387).

Reg. v. Treasury Lords Commissioners, ((1909) 2, Q.B., 183 at 191).

Prayer 2A of Statement of Claim.

Submit Mandamus does not lie against the Crown and its Agent, Government. 10

Pensions Ordinance, 1951, Section 5(1).

Claim should be dismissed with costs.

Jag-Jit Singh:

This is not a case of wrongful dismissal but for a declaration that the purported order of dismissal was void and inoperative and Plaintiff still a member of Police force.

- (1) Was dismissal effected by proper authority? 20
- (2) If so, was he given a reasonable opportunity of being heard?

Has Court jurisdiction on Plaintiff's allegation that he was denied opportunity of being heard - or is his right remedy by certiorari?

Basu's Commentary on Constitution of India, page 478.

What reasonable opportunity implies.

Secretary of State v. Lal (A.I.R. 1945 (P.C.) 47 at 57. 30

Reasonable opportunity at both stages:-

- (1) as to the Inquiry
- (2) as to the punishment.

Malayan Constitutional Document, page 28
(footnote).

Article 135(2) affords Plaintiff a constitutional right to be given a reasonable opportunity of being heard before dismissal.

Submit Court has power to decide whether Plaintiff was afforded that right.

10 As to Cooper v. Wilson's case.

Deputy Public Prosecutor cited a dissenting judgment.

Refer to judgment of Greer, L.J. - at page 320.

Barnard & Ors. v. National Dock Labour Board & Anor. ((1953) 1, All E.R., 1113 at 1119).

Healey v. Minister of Health (1955) 1, Q.B., 221 at 227)

Halsbury's Laws of England, 3rd edition,
Volume 22, pages 746 and 749.

20 Declaratory judgments and judgments against the Crown.

We are seeking relief under the Constitutional law of the country.

30 Gravamen of Plaintiff's claim is not that hearing of the charge was irregular but that before, during, and after the dismissal he was never apprised of the proposal to dismiss him and never afforded the opportunity of showing cause - either by the Adjudicating Officer or by the Commissioner of Police or by the Police Service Commission or by the Appellate Authority - why he should not be dismissed.

As to right of Crown to dismiss.

Submit intention of Article to write into the

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constitutional law right of public servants as to security of tenure.

Concede that apart from this guarantee, no limitation on common law right of Crown to dismiss its servants at will.

Draw attention to fact that in Privy Council case, - Suraj Narain's - he asked for his salary and got it.

Draw attention to fact that Defence have never pleaded lack of jurisdiction. 10

(A) Was his dismissal effected by the proper authority?

Article 135(1) of the Constitution.

Plaintiff dismissed by the Commissioner of Police.

For dismissal to be valid:-

- (1) Commissioner of Police must be the appointing authority, or
- (2) Senior thereto, or
- (3) if junior thereto, can dismiss under Article 144(6) if such powers delegated to him by a superior authority. 20

Defendants have not attempted to show that the Police Service Commission ever delegated any of its powers to the Commissioner of Police. On the contrary, have argued that the Police Service Commission was acting on behalf of the Commissioner of Police.

Yet by paragraph 3 of their Defence Defendants have expressly admitted paragraph 7 of the Statement of Claim that Commissioner of Police was an authority subordinate to the Police Service Commission. 30

Who is the appointing authority?

Police Ordinance, Section 9(1).

Commissioner of Police's power to appoint a superior police officer.

Section 45 - Power to dismiss.

Concede that if those provisions of statutory effect on 7.7.58 then dismissal valid.

But submit not operative by virtue of the commencement of the Constitution on 31.8.57.

Article 162(1) provides for continuance of existing laws unless repealed.

Stress the words "with such modification".

Then see Article 162(7).

10 Article 162(1) - stress words "until repealed by the authority having power to do so".

Submit such repeal can be express or implied.

Submit Police Service Commission came into effect by virtue of Article 140(1) of the Constitution.

Service Commissions Ordinance No.74 of 1957.

20 Submit Article 144(1) should be read in conjunction with Article 140 - and that therefore powers of appointment and dismissal vested in the Police Service Commission and not the Commissioner of Police.

Article 140(2) - constitution of the Police Service Commission.

Article 142(2) - Restrictions as to make-up of the Commission.

Article 144(1)

"Subject to the provisions of any existing law".

Defence seek to stop there.

30 But Article continues "and to the provisions of this Constitution".

Article continues "it shall be the duty" etc.

That is the enacting part of the Article.

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continued

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Refer again to 1897 A.C., 647 at 652 and 651 and 655 and 612. 1893, 1, Q.B.

Suggest that words "subject to the provisions of any existing laws" are applicable to such laws as to number of appointees and conditions and requirements of service - or, e.g., the minority rights of Malaya.

Ask Court, in words of Lord Watson, to "lay out of sight" the words of the proviso and see if one can discover any substantive language in Article 144(1) of the Constitution which, either expressly or by reasonable implication, confers any powers of appointment to the rank of a superior police officer in a Commissioner of Police.

10

Submit answer no.

12.50 p.m. Adjourned to 2.30 p.m.

(Signed) I.C.C. RIGBY
JUDGE, 12.1.60.

2.30 p.m. Hearing resumed.

20

Massie:

At request of Court have here the Manual of Military Law. Section 46, Army Act.

As to Rules of Procedure refer to Regulation 124.

Jag-Jit Singh (continues):

Board of Inquiry not convened to look into conduct of a particular officer.

Commissioner's Standing Orders, Part A.122.

"Forms of official inquiry" (Five forms).

30

Reverting to my argument immediately before lunch.

Submit provisions of Police Ordinance, 1952, in so far as they deal with appointment and dismissal of superior police officers - and Articles 135 and 144 of Constitution are so repugnant that they cannot stand together.

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Article 135(1) expressly negatives the power of subordinate bodies to dismiss public servants from office.

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continued

10 Submit it makes no sense to read the proviso to Article 144 as meaning "subject to existing powers of the Commissioner of Police to appoint and dismiss superior police officers, it shall be the duty of the Police Service Commission to appoint and exercise disciplinary control over police officers."

The two provisions are irreconcilable.

20 Refer again to Summers v. Holborn District Board of Works ((1893) 1, Q.B. 612 at 617 and 618, and Churchwardens and Overseers of West Ham v. Fourth City Mutual Building Society & Anor. ((1892) 1, Q.B., 654 at 658.)

Submit that Sections 9 and 45 of the Police Ordinance are impliedly repealed by Articles 140 and 144 of the Constitution.

Submit that where two statutes give authority to two public bodies to exercise powers which cannot, with the object of the legislator, co-exist, the earlier must necessarily be repealed by the later statute.

30 Daw v. Metropolitan Board of Works ((1862) 142, E.R. 1104) and

Paget v. Foley ((1836) 132 E.R., 261)

"Repugnant" - meaning of:

See Clyde v. Cowburn (37, O.L.R. 466).
1949, Dom. L.R., 1.

Minerva Mills Ltd. & Anor. v. Arbitration Tribunal. ((1949) 4, Dom. L.R., (Mysore) 37 at 44.)

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Where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction or to some absurdity, the words should be interpreted in a way rather of promoting, and not defeating, the purpose of the Act.

Maxwell on Interpretation of Statutes, 8th edition, 202.

Rup Devi v. Matwal Chand ((1949) 4, Dom. L.R. (Lahore) 9, at 10).

10

As to provisos:-

Bajrang & 12 ors v. The Crown ((1950) 5, Dom. L.R., (Nagpur) 98 at 101).

"When there is an irreconcilable repugnance.... the latter must give way."

River Wear Commissioners v. Adamson (2, A.C., 743 at 778).

Commissioner of Income Tax, Bombay v. Murlidhar Mathurawalla Mahajan Association ((1950) 5, Dom L.R. (Bombay) 5 at 6)

20

"Where the language of the main enactment is clear and Unambiguous"

George Oaks Ltd. v. Chief Judge, Small Causes Court ((1950) 5, Dom. L.R. (Madras) 333 at 335)

"If there is an ambiguity or doubt....."

Governor-General-in-Council v. Municipal Council ((1949) 4, Dom. L.R. (P.C.) 9 at 12).

Puranmal Fattechand Agerwal & Ors. v. Jagannath Hansraj, ((1949) 4, Dom., L.R. (Nagpur) 18 at 20)

30

"No rule can override the provisions of a statute unless some statute authorises them."

Mr. Chalmers' evidence as to administrative arrangement is unsupported by evidence.

Submit that only the Commissioner of Police can

act under Section 4(7A) of Police Regulations -
in so far as it concerns dismissal.

Submit that if Adjudicating Officer acts not on
instructions of Commissioner of Police but on
someone's instructions then Adjudicating Officer's
actions are ultra vires and of no effect.

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(Submit Adjudicating Officer became clearly
functus officio on 10.5.58. Having found the
Plaintiff guilty he sent the papers to the De-
puty Commissioner of Police and not to the Com-
missioner of Police.)

Final Addresses
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continued

No evidence at all that Commissioner of Police
ever looked at the papers.

Refer to Statement of Claim - paragraph 3.
Admitted by paragraph 1 of Statement of Defence.

By that admission submit Defendants must be
deemed to have admitted the principle "leges
posteriores priores contrarias abrogant."

Repugnancy.

Brown v. G.W.R. ((1881-82) 9, Q.B.D., 741 at 752-3)
Commission has been functioning and exercising
the powers of appointment since its inception
to the exclusion of the Commissioner of Police
who has never made any such appointment.

Defendants rely on Article 162(1) of the Con-
stitution. Refer to Article 162(6).

Submit Commissioner of Police's powers of ap-
pointment and dismissal taken away from him
under the Constitution and given to the Police
Service Commission.

Police Service Commission have never delegated
their powers to the Commissioner of Police.

My submissions supported by Mr. Chalmers' evid-
ence - pages 19-21 of typewritten record.

Since Merdeka powers of appointment of superior
police officers carried out by the Police Ser-
vice Commission. Under Article 144(1) Police
Service Commission has a duty to appoint, etc.

10

20

30

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As to the administrative arrangements:

Mr. Chalmers' evidence - page 20 of type-written record.

Submit this merely provided the internal machinery whereby the Commission was enabled to perform its constitutional functions.

Mr. Chalmers' evidence confirmed by Mr. Jefferies' at page 23.

Submit no doubt that Plaintiff dismissed by an officer subordinate to the authority that has in fact been exercising powers of appointment since Merdeka Day.

10

Refer again to Article 135(1) and again to North West Frontier Province v. Suraj Narain (1949, A.I.R. (P.C.) 112.

Plaintiff's Statement of Claim copied from that case.

High Commissioner for India v. I.M.Lall
(already cited).

Article 135(1) - Article 311 Indian Constitution Explained in Basu's book, at page 469.

20

(b) Was Plaintiff given a reasonable opportunity of being heard?

4.20 p.m. Adjourned to 2.30 p.m. on 13.1.60.

(Signed) I.C.C.RIGBY

JUDGE. 12.1.60.

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13th January, 1960

Civil Suit No.232 of 1959

B. Surinder Singh Kanda

v.

The Government of the
Federation of Malaya

30

2.30 p.m. Hearing resumed.
Counsel as before.

Jag-Jit Singh:

As to the alleged analogy to Court-Martial Proceedings.

Submit a complete misrepresentation.
 Manual of Military Law, page 687.
 Section 124(f). See also Section 124(m).
 Stress the words "throughout the inquiry".
 Commissioner's Standing Orders, Part A.122 -
 Part 4.

Such inquiries held when there is "a major failure on the part of the Force."

10 Refer to evidence that Plaintiff informed that "there were two Boards of Inquiry against him".

Submit that under Commissioner's Standing Orders, Part A.207, paragraph 8 :-

Plaintiff complains that he was not given a copy of the Findings of the Board of Inquiry.

20 Senior Assistant Commissioner of Police Mr. Yates in his Findings of the Board of Inquiry described Plaintiff as "the villain of the piece".

How could Mr. Strathairn - a junior officer - be expected to arrive at a different conclusion in the fact of Mr. Yates' express findings?

Refer to Mr. Yates' letter of 12.3.58.

The Adjudicating Officer had before him the detailed Report of the Board of Inquiry.

30 The Plaintiff never had an opportunity to refer to and rebut the findings there made, which were before the Adjudicating Officer both before and throughout the hearing of the Disciplinary Proceedings.

Plaintiff condemned by the findings of the Board of Inquiry before he ever made his defence in the disciplinary proceedings.

He was convicted on the evidence of informers and perjurers.

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 continued

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continued

(B) Was he given a reasonable opportunity of being heard?

Have submitted that these words - found in Article 135(2) must mean being heard as to both conviction and sentence (i.e. dismissal).

Opportunity of being heard as to his dismissal.

Submit this must include opportunity of being heard by the dismissing authority itself.

I.M. Lall's case (already cited).

Refer to our Article 135(2) and Section 240 of Government of India Act. 10

No person shall be dismisseduntil he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Refer to Article 162(4) of the Constitution - page 112.

Submit that the Public Officers (Conduct & Discipline) Regulations Order, 1957, applied for the following reasons:- 20

(1) Plaintiff a Division II officer.

Dismissal not a small matter - affects the livelihood of the employee and the general efficiency of the staff - from view of employer.

Under disciplinary proceedings an Adjudicating Officer may award punishment.

Police Ordinance, Section 22.

In view of that Section submit Section 38 of Public Officers (Conduct & Discipline) Regulations Order, applies. 30

Even if it does not apply, fact remains that at no time was Plaintiff given a reasonable opportunity of being heard as to his dismissal.

Not sufficient after conviction by the

Adjudicating Officer for Adjudicating Officer simply to ask convict if he wishes to say anything unless Adjudicating Officer has expressly told convict of the recommendation (e.g. dismissal) he proposes to make.

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Mr. Strathairn's evidence - page 29.

Refer to Plaintiff's own letter at A.70.

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continued

Refer also to Mr. Hindmarsh's letter at A.366 (c).

10 The corrected Form Pol.9A is to be found at A.131.

True that contains statement :-

"Finding: Guilty on Original Charge",

but submit clear from Mr. Hindmarsh's own letter at A.366(c) that that cannot have appeared on the original Form Pol.9A and must have been subsequently inserted.

Court: But see A.377.

Jag-Jit Singh:

20 That only refers to the conviction on the 2nd Charge.

A.377 never given to my client.

Only produced at the last moment.

See A.83 - paragraph 5.

If Plaintiff had known on which of the alternative charges he had been convicted, would he have sent the last paragraph of that letter?

30 Answer to A.83 is to be found at A.120, paragraph (d)(ii).

What was in the original Form Pol.9A?

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Why was it destroyed?

Examine Form Pol.9A in its present Form.

Refer to Lall's case.

Plaintiff has a right to opportunity of showing cause twice:-

- (1) when charges inquired into; and
- (2) before sentence - or recommendation as to sentence.

See Mr. Strathairn's "summing-up" at A.377.

At the Inquiry stage submit he had an opportunity of being heard as to the punishment recommended and after the Inquiry as to the punishment proposed - and again on appeal. (Police Ordinance, Section 47 and Regulation 15 of Police Regulations).

10

As to the Inquiry stage - Plaintiff asked for an adjournment for further time to prepare his defence and asked for copies of documents. Denied to him.

Denials of opportunity to be heard:-

20

- (1) When he asked for an adjournment of Orderly Room proceedings on grounds not only that he had not been supplied with all the documents asked for, but also that such documents as he had received had only been furnished to him at the last moment. Evidence - pages 7-8.
- (2) He objected to the charges on legal grounds. Police Regulations, Regulation 3(2). Two charges framed arising out of the same transaction.

30

See also Mr. Yates' letter at A.366.

To be given only an opportunity to argue the matter almost immediately after a person has perused the charges, does not constitute a reasonable opportunity to make a representation.

Gicharay v. State of Madhya Pradesh, ((1952) 7, Dom. L.R. (Nagpur) 58 at 59).

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Defence called on 5th May and concluded 7th May - and Plaintiff told he would be notified of result.

On 8th May recalled and given further documents from George Town Investigation Paper.

Final Addresses of Counsel
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 continued

Had asked for this file by his letter dated 3rd April, (A.11).

10 On 9th May, given further documents.

Not given these vital documents during the Inquiry - only furnished with them after the Inquiry.

Why? Submit because Adjudicating Officer then realised he should have been given them during the Inquiry for purposes of his defence.

20 Mr. Strathairn at first said these documents had been given to Plaintiff 7 - 10 days before the Inquiry.

But when confronted with his own signed notes sent by him to cover handing over of these documents to Plaintiff, he then had to admit he was wrong as to the dates.

See his evidence - at page A.39.

See also his letter at A.364.

 Court: What was the relevance of those statements which were not supplied to him till 8th and 9th May?

30 4.45 p.m. Adjourned to 10 a.m. on 16.1.60.

(Signed) I.C.C. RIGBY
 JUDGE.
 13.1.60.

In the Supreme
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16th January, 1960

CIVIL SUIT NO.232 of 1959

No.12

B. Surinder Singh Kanda ... Plaintiff

v.

The Government of the
Federation of Malaya ... Defendants

Final Addresses
of Counsel
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continued

10 a.m. Hearing resumed.
Counsel as before.

Jag-Jit Singh:

Relevance of the statements not supplied
to Plaintiff till 8th and 9th May.

10

Not asking the Court to re-open the case.

Don't propose to deal with those state-
ments in detail.

Will deal generally with failure of Defence
to make available to Plaintiff all docu-
ments he asked for in his letter of
3.4.58 (A.11).

Defence have submitted that such documents
furnished by them were as a concession
and not a right.

20

Submit erroneous and contrary to authority.

Refer to Commissioner's Standing Orders
A.207 - paragraph 8.

Commissioner of Police cannot flout his
own rules. These Rules are made by Com-
missioner of Police under Section 82 of
Police Ordinance and they have statutory
effect.

Refer to Adjudicating Officer's letter to
Plaintiff at A.9.

30

Stress the words therein "following upon

the Report of the Board of Inquiry".

Surely Plaintiff was entitled to see that Report.

For purposes of preparing his defence vitally important that he should have before him all the relevant documents to enable him to do so.

Submit relevant documents were :-

- (1) Complete Notes and Findings of the Board of Inquiry;
- (2) Notes of Evidence of Criminal Trial No.11 of 1957;
- (3) Georgetown Investigation Paper No.1025 of 1957.

Refer to copy of the charges themselves - at A.10.

Stress words "whilst performingduties as a Police Inspector engaged in preparing Georgetown I.P. 1025/57, etc. etc."

Main charge was the failure to disclose certain facts in relation to that Investigation Paper.

Surely he was entitled to have before him a copy of all the I.P. papers.

Defendants simply say: he was not entitled to them - no other reason given.

Gravamen of Plaintiff's case not the irregularities in the Orderly Room proceedings, but the failure to afford him a full opportunity of presenting his defence.

Stress failure of Defence to supply the I.P. 1025 of 1957.

A vital omission.

Seven opportunities denied to him:-

- (1) Insufficient time to prepare his case.

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10

20

30

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Evidence - page A.8

- (2) Charges not in accordance with Regulation 3(2) of Police Regulations.

Plaintiff's objection over-ruled -
Evidence - A.8.

- (3) Not given a copy of Georgetown I.P.1025/57 - although he had asked for it;

- (4) Not given a copy of Notes of Evidence in High Court Criminal Trial No.11/57.

- (5) Not supplied with a copy of the Board of Inquiry which described him as "the villain of the piece". Refer again to Lall's case. 10

Person charged should get a copy of the findings against him.

- (6) At no time given a complete copy of the Orderly Room proceedings to enable him to put up his grounds of appeal.

Evidence - A.12 - 13.

- (7) At no time given a copy of the Summing-up of the Adjudicating Officer until after the institution of this Suit. 20

Yet the Appeals Committee had before it:-

- (1) The Georgetown I.P. file.
(2) The Board of Inquiry Proceedings.
(3) The Orderly Room Proceedings.

- (1) and (2) above not supplied to the Plaintiff.

For convenience of Court have prepared a written summary - which I produce to Court (copy to Legal Adviser) showing consequences of withholding the I.P. papers and the inconsistencies and contradictions between statements of witnesses to the Board of Inquiry and the evidence which they gave at Orderly Room proceedings. If Plaintiff had been furnished with full record of Board of Inquiry proceedings at time 30

Orderly Room proceedings taking place against him, he would have had an opportunity to cross-examine these witnesses as to these inconsistencies, etc.

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Document marked "X".

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Submit Defendants have infringed the concept of natural justice.

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continued

Refer to S.A. de Smith's "Judicial Review of Administrative Action", page 101, line 9.

10 Submit Defendants not entitled to judgment in any event.

The Pleadings disclose no defence at all.

Refer to paragraph 10 of Statement of Claim.

Defendants have tied themselves down to constructing "reasonable opportunity of being heard" as meaning being heard at the Orderly Room proceedings.

20 Submit quite insufficient - particularly having regard to my Further and Better Particulars - to satisfy Article 135(2) of the Constitution.

Submit Plaintiff entitled to succeed on the Pleadings alone.

Defence has led no evidence to show that Plaintiff knew that punishment proposed was dismissal - never given an opportunity to show cause why he should not be dismissed.

Venkata Rao's case cited by Legal Adviser, deals with procedure.

30 We are not attacking any mere irregularities of procedure, as such.

Common law right of Crown to dismiss at pleasure is itself curtailed by the entrenched provisions of the Constitution safeguarding the rights of public officers.

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continued

Salary:

Submit if Plaintiff obtains the declaration that he is still a member of the Police Force on grounds his dismissal a nullity, then submit he is entitled to an Order for arrears of salary due to him since date of his dismissal.

Massie:

For convenience of Court produce Army Act, 1955 - dealing with Court Martial proceedings and Trial and Punishment for Military Offences - The Rules of procedure (Army) 1956.

10

Submit there is a clear distinction between Orderly Room proceedings and Court Martial proceedings.

In the latter, by Rule 124(M) there is specific provision for furnishing to an accused a copy of previous Board of Inquiry proceedings giving rise to the charge, but no such right in Orderly Room proceedings.

20

Both Acts have been applied to Malaya - up to Merdeka.

12 noon -

C.A.V.

(Signed) I.C.C.RIGBY,
JUDGE.
16th January, 1960.

No. 13 - JUDGMENTIN THE SUPREME COURT OF THE FEDERATION
OF MALAYAIN THE HIGH COURT AT PENANGCIVIL SUIT NO. 232 OF 1959.

In the Supreme
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Judgment of
Rigby J.
24th March 1960

B. Surinder Singh Kanda ... Plaintiff
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The Government of the
Federation of Malaya. ... Defendants

JUDGMENT OF RIGBY, J.

10

In this action the Plaintiff claims a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by one, Mr. W.L.R. Carbonell, the then Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958, was void, inoperative and of no effect and that he is still a member of the said Police Force. He further asks for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

20

30

2. The Plaintiff bases his claim on two grounds, one a matter of law, and the other of mixed law and fact. First, he contended, that, as a matter of law, by virtue of the Federal Constitution which became the supreme law of the Federation of Malaya as from the 31st day of August, 1957, the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission. Secondly, he contended that even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable

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opportunity of being heard before the order of dismissal was made against him. It will be convenient to deal with these two submissions in the order in which they have been raised.

3. The Plaintiff joined the Federation of Malaya Police Force on the 1st day of March, 1951, as a Probationary Asian Inspector. On the 31st day of August, 1951, by a Certificate of Appointment, he was appointed a Superior Police Officer in the rank of Probationary Inspector. On the 1st day of June, 1953, he was confirmed in the substantive rank of Police Inspector and placed on the pensionable establishment. On the 7th day of July, 1958, for reasons to which I will later have to refer, the then Commissioner of Police ordered his dismissal from the Police Force.

10

4. Section 9 of the Police Ordinance, 1952, empowered the Commissioner of Police to appoint a Superior Police Officer, and Section 45(1) of the Ordinance, read in conjunction with the First Schedule thereto, empowered him, subject to Police Regulations, to dismiss a Superior Police Officer. It was conceded on behalf of the Plaintiff that if in fact those statutory provisions were still operative on the 7th day of July, 1958, then the order of dismissal was valid. But it was contended that those provisions had been impliedly repealed by Articles contained in the Federal Constitution and in the following manner.

20

30

Part X of the Constitution deals comprehensively with the Public Services and provides for the appointment and constitution of various Service Commissions to deal respectively with the different branches of the Public Services, including the Police Service.

Article 144(1) enacts that :-

"144.(1) Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

40

Article 144(7) makes it clear that "transfer" within the meaning of Article 144(1) does not include "transfer without change of rank within a department of government."

10 The argument put forward on behalf of the Plaintiff is that by virtue of the provisions of Article 144(1) the powers previously vested in the Commissioner of Police "to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control" have been transferred to the Police Service Commission. Reference is then made to Article 135(1) which provides that :-

20 "No member of any of the Services..... shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that Service of equal rank".

It is contended that by virtue of Article 144(1), at the time of the Plaintiff's dismissal the only authority empowered to appoint an officer of his rank was the Police Service Commission and, therefore, having regard to the provisions of Article 144(1), read in conjunction with Article 135(1), such dismissal could only be ordered by the Police Service Commission.

30 It is indisputable that the Police Ordinance, 1952, which gave the Commissioner of Police full powers of appointment and dismissal of Superior Police Officers, was "existing law" at the time the Constitution came into force. But it is argued that the words "subject to the provisions of any existing law and to the provisions of this Constitution" (the underlining is mine) must be read as a whole, and that the whole purpose and effect of Part X of the Constitution was to entrench within its provisions the security of tenure of persons in the Public Services and to place the control thereof, in so far as it related to powers of appointment, promotion and dismissal, in the various Commissions specifically appointed and entrusted with such functions. I find myself

40

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in complete agreement with that argument.
Article 162(1) provides that :-

" Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article (the underlining is mine) and subject to any amendments made by federal or State law".

10

"Modification" is defined in Article 162(7) as including "amendment, adaptation and repeal".

It is true that the relevant Sections of the Police Ordinance vesting powers of appointment and dismissal of Superior Police Officers in the Commissioner of Police have not been specifically amended by Legislation. But Article 152(6) provides that :-

20

" Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution".
(the underlining is mine).

In my view, bearing in mind what I conceive to be the purport and intent of the provisions of Part X of the Constitution, the previously existing statutory powers of the Commissioner of Police to appoint, confirm, promote, and dismiss Superior Police Officers were impliedly revoked by Article 144, which places such powers in the hands of the Police Service Commission and, to that extent, the relevant Sections of the Police Ordinance conferring these powers upon the Commissioner of Police must be regarded as "modified", that is to say, repealed.

30

40

A number of authorities were cited to me by Mr. Jag-Jit Singh, who argued the case most ably on behalf of the Plaintiff, on the subject

of repeal by implication by subsequent legislation. I do not, however, think it necessary to refer to any of those authorities.

10 Having arrived at this conclusion on the law, it is not without interest to observe that the evidence adduced by the Defendants themselves establishes that all appointments of Superior Police Officers since Merdeka Day have, in fact, been made by the Police Service Commission. The explanation put forward for this fact was the somewhat remarkable one, that the Police Service Commission was acting on behalf of the Commissioner of Police. I find such an explanation wholly untenable.

20 Whilst it might well seem inconvenient that administrative powers involving the appointment, promotion and dismissal of Superior Police Officers should vest in the Police Service Commission rather than in the Commissioner of Police, the remedy for this situation would seem to lie in the application of Article 144(6) of the Constitution which enables a Commission to delegate any of its functions to any officer or board of officers appointed by it. But it was at no time suggested that the Police Service Commission had ever delegated any of its powers to the Commissioner of Police. On the contrary, as I have said, the argument advanced was the somewhat curious one, that by way of some unexplained administrative arrangement the Police Service Commission acted on behalf of the Commissioner of Police.

40 In my view, on construction of Article 144(1), read in conjunction with Article 135(1) of the Federal Constitution, at the time of his dismissal, the power to appoint and consequently the power to dismiss - the Plaintiff was vested in the Police Service Commission, and the Commissioner of Police, as an authority subordinate to the Police Service Commission, had no power to dismiss him. I should, perhaps, add that the fact that the Commissioner of Police is an authority subordinate to the Police Service Commission is expressly admitted by the Defendants in their pleadings. It follows that, in my view, the Plaintiff's purported dismissal

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by the then Commissioner of Police on the 7th day of July, 1958, was void and inoperative, and he is accordingly entitled to the declaration and consequential orders which he seeks in his Statement of Claim.

5. Since this case may well go to another Court I think it both desirable and necessary that I should consider and deal with the alternative ground on which the Plaintiff bases his claim, namely, that even assuming the Commissioner of Police had the power to dismiss him, such dismissal was contrary to natural justice and in breach of the Constitution in that he was not afforded a reasonable opportunity of being heard before the order of dismissal against him was made. Article 135(2) of the Constitution specifically provides that no member of the Public Services shall be dismissed or reduced in rank "without being given a reasonable opportunity of being heard". The argument on this ground of the Plaintiff's claim involves some consideration of the facts leading up to the Plaintiff's dismissal.

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6. In September, 1957, two persons were tried before me in the Supreme Court, Penang, on charges involving possession of forged lottery tickets, contrary to Section 474 of the Penal Code. The 1st accused was charged with the substantive offence, and the 2nd accused with abetting the commission of that offence. The case for the prosecution rested substantially upon the testimony of two Police informers of a thoroughly dubious character, one of whom was a rogue and confidence trickster with a number of previous convictions, and both of whom undoubtedly committed perjury in the proceedings before the Court.

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The allegation was that the 1st accused had given forged lottery tickets to one of the informers and offered to supply more if he could find a suitable purchaser. The matter was reported to the Police and a trap was arranged, with a Police Detective Sergeant posing as the willing purchaser. Both the Police informers conducted the 1st accused to a hotel. In a room at the hotel the 1st accused was introduced to the intending purchaser. Forged lottery tickets

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were produced and the trap duly sprung. The question for consideration virtually turned upon whether this was a genuine trap or, as alleged by the defence, a deliberate frame-up on the part of the two Police informers who had given false information to the Police for some nefarious purpose to suit their own ends. The case against the 2nd accused was considerably weaker. It consisted of two pieces of evidence. First, the evidence of one of the informers that when he met the 1st accused by arrangement in the street before proceeding to the hotel he saw a man, whom he identified as the 2nd accused, come up to the 1st accused and hand over to him a parcel subsequently found to contain the forged lottery tickets. The second piece of evidence was, perhaps, of even more dubious value. After the 1st accused had been arrested in the hotel after allegedly handing over the forged lottery tickets, he allegedly made a statement. As a result of that statement he was taken the following morning to a particular cafe. The purpose of taking him to the cafe was that he could there hand over the proceeds of the money, which he was supposed to have received for the sale of the forged lottery tickets, to the actual supplier of those tickets. While sitting in the cafe the 2nd accused was seen to pass by on a bicycle. The 1st accused called to him by name and the 2nd accused then came and sat down at the same table. He was then immediately arrested. The evidence went no further than that. The jury returned a unanimous verdict of not guilty against the 2nd accused and a majority verdict (5 to 2) of not guilty against the 1st accused.

During the course of the trial both informers swore positively that they were acting entirely independently of one another and that neither of them knew that the other was working in conjunction with the Police. One of them went so far as to say that when he conducted the 1st accused to the hotel to meet the prospective buyer of the forged lottery tickets he had no idea that a trap had been arranged. Yet both of them had given information to the Police and both of them were actively assisting the Police. It was clear that their evidence in this respect was palpably and deliberately untrue.

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Unfortunately, it was equally clear during the trial that at least two other Police Officers had deliberately given false evidence. One of them, when recalled and examined by the Court, finally admitted that he had given false evidence. This Police Officer was subsequently prosecuted and pleaded guilty to that charge. On this extremely serious charge of perjury committed by a Senior Police Officer in the High Court the then President of the Sessions Court, Mr. B.J. Jennings, made what I can only describe as the wholly remarkable order of conditionally discharging the accused, without any conviction being recorded, on a bond of good behaviour for a period of two years. He still remains a member of the Police Force. Called as a witness to give evidence as to the good character of this perjured Police Officer was an Assistant Superintendent of Police (since promoted to act as Deputy Superintendent of Police) - a witness who had himself committed perjury in the course of the same proceedings, but against whom no criminal proceedings were instituted. (See the letter marked "DE.11" included in the Report of the Board of Inquiry marked Ex. D.15, and paragraph 56 of the Findings of that Board). A further prosecution for perjury was brought against another Police witness, a detective sergeant, but this prosecution was for some reason withdrawn.

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7. As a result of the failure of the prosecution to secure a conviction in the forged lottery tickets case a Board of Inquiry was convened by order of the then Commissioner of Police. The Board of Inquiry was presided over by Mr. D.W. Yates, who was then Acting Senior Assistant Commissioner, C.I.D. Headquarters, Kuala Lumpur. The Board sat for a number of days during December, 1957, and January, 1958, and recorded the unsworn statements of 18 witnesses, including the Plaintiff, the two Police informers, and the Police witnesses who had given evidence for the prosecution in the High Court Criminal Trial. The Board produced a most careful and exhaustive Report of its findings in which it dealt with the part played by each Police Officer who had had anything to do with the case.

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At the time of the prosecution of the case the Plaintiff was, among other things, officer i/c Special Crime Branch. In that capacity, it is apparent that he played an active part in the initial stages of the case leading up to, and including, the laying of the trap whereby the 1st accused was to offer the forged lottery tickets to the prospective purchaser, who was, in reality, a Police Officer. Subsequently he became Officer in charge of the investigation of the case. He appeared on the scene immediately after the trap was sprung and it was he who arrested the 1st accused and subsequently spent a considerable time into the early hours of the morning interrogating him and taking a statement from him. He was concerned in the trap laid to catch the 2nd accused in the cafe the following morning, and it was to him the 2nd accused was brought for interrogation after his arrest. Subsequently he accompanied the 2nd accused to Kuala Lumpur on a visit to find out the source of the forged lottery tickets. The visit proved fruitless because, so it is said, the 2nd accused turned "hostile" and refused to give any further information.

In its Findings the Board of Inquiry stated that they were "unanimously of the opinion that Police Inspector Kanda is the 'villain of the piece'". The board found not only that Inspector Kanda had suborned the Police witnesses with the object of simplifying and short-circuiting certain evidence, but also that he had suborned the two Police informers with the very much more sinister motive "dishonestly to strengthen the case against both accused in order to ensure a conviction in Court". In paragraph 72 of its Report the Board stated that they were "forced to the conclusion that Inspector Kanda is a very ambitious and a thoroughly unscrupulous Officer who is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods".

8. Now, the Board was composed of three

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Senior Police Officers all of considerable experience. Their Findings were based upon the testimony of witnesses who gave evidence before them. They had the fullest opportunity to form their impressions as to the credibility of these witnesses, whether or not they were lying, and the weight to be attached to their statements. I have already said, and I repeat it, that it was a most careful and exhaustive Report. It would be entirely presumptuous for me to criticise or disagree in any way with its Findings; nor have I the slightest intention to do so. Assuming the Findings of the Board to be correct, not only was the Plaintiff a thoroughly unscrupulous scoundrel wholly unfit to be a Police Officer, but he was also guilty of the serious criminal charges of subornation of perjury and fabricating evidence with intent to secure a conviction of an offence punishable with imprisonment. The difficulty, of course, that the prosecution would have had to face if criminal charges had been brought against the Plaintiff was that it would have had to rely for its success upon the evidence of witnesses - Police witnesses and informers - who had themselves admittedly committed perjury even though - as alleged - such perjury was committed at the instance of the Plaintiff himself. The success of a prosecution on such evidence is necessarily open to doubt.

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9. As a result of the Findings of the Board disciplinary charges were preferred against the Plaintiff. Upon the instructions of the Deputy Commissioner of Police, Mr. H.W. Strathairn was appointed an Adjudicating Officer to hear those charges. A letter dated the 12th day of March, 1958, (Exhibit P.18) written and signed by Mr. D.W. Yates was sent to Mr. Strathairn enclosing the specimen charges drafted by Mr. Yates which, it was suggested, should be preferred against the Plaintiff, and indicating briefly the witnesses that should be called in support of those charges. Enclosed with the letter was a copy of the Findings of the Board of Inquiry.

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The nature and particulars of the charges actually preferred against the Plaintiff are set out in paragraph 4 of the Statement of Claim and I do not propose to re-state them here. Looking

at those disciplinary charges as they stand I think it not unfair to say that they seem to bear little relation to the extremely serious Findings of the Board, that the Plaintiff had deliberately suborned witnesses to commit perjury and to fabricate false evidence in support of serious criminal charges against two members of the public. The seriousness of the allegations against the Plaintiff is fully emphasised in the draft charges prepared by Mr. Yates and it seems to me unfortunate that those charges as drafted were not persisted in against the Plaintiff rather than the preferment of the disciplinary charges, relatively trivial on the face of them, upon which he was, in fact, tried. It may well be that the explanation lies in the fact that it may have been considered that the specimen charges as framed by Mr. Yates were bad for multiplicity within the meaning of Regulation 3(2) of the Police Regulations, whereas it was considered, rightly or wrongly, that the various allegations made against him as set out in the particulars of the new charges might properly be said to arise out of the same transaction, namely, a failure to disclose certain items of evidence when performing his duties as a Police Inspector in preparing his investigation paper in relation to the charges of possession of forged lottery tickets against the two accused. The fact remains, however, that, on the face of them, the disciplinary charges actually preferred against the Plaintiff bore little relation to the extremely serious Findings of the Board of Inquiry.

10. Disciplinary proceedings against the Plaintiff commenced on the 16th day of April, 1958, and concluded on the 10th day of May, 1958. They consisted of the original charge and an alternative charge arising out of the same facts. Immediately before the hearing, a further disciplinary charge of a somewhat minor nature was handed to the Plaintiff. The Plaintiff objected to the original and alternative charges on the ground that the charges were bad for multiplicity in the sense that, contrary to Regulation 3(2) of the Police Regulations, they alleged the commission of more than one offence and that they should, therefore, be the subject of separate and distinct charges. He

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further objected to the additional charge and asked for an adjournment to prepare his defence to this charge. His objection was summarily overruled by the Adjudicating Officer. The trial proceeded and concluded on the 10th day of May, 1958.

11. On the 10th day of May, 1958, the Plaintiff was brought before Mr. Strathairn, who informed him that he had found the charge against him proved. He was asked if he had anything to say and he made a short plea in mitigation. There has been some conflict of evidence, and considerable argument, as to which charge - whether the original or the additional charge - it was upon which Mr. Strathairn convicted the Plaintiff, and to which charge he accordingly made his plea in mitigation. The Plaintiff said that at the proceedings on the 10th May Mr. Strathairn informed him that he reserved judgment on the 1st charge, but convicted him on the additional (and relatively minor) charge, and that it was in respect of his conviction upon the additional charge that he made his plea in mitigation.

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The importance to be attached to this particular piece of evidence lies in the argument put forward by Mr. Jag-Jit Singh. It was upon the 1st charge that the Adjudicating Officer purported to convict the Plaintiff and made his recommendation for dismissal, a recommendation which the Commissioner of Police subsequently confirmed. Mr. Jag-Jit Singh's argument was that by virtue of Article 135(2) of the Constitution the Plaintiff could not be dismissed without being given a reasonable opportunity of being heard. He contended on the authority of Indian cases that he cited that the words "a reasonable opportunity of being heard" include an opportunity of being heard both before conviction and again before sentence. He contended, therefore, that if in fact the Plaintiff was not notified on the 10th May of his conviction on the 1st charge, but only on the additional charge, then he had been given no opportunity of being heard before the sentence of dismissal was made against him and such sentence was, therefore, invalid. I accept that argument as correct. But having heard

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the evidence of Mr. Strathairn and considered the document, Exhibit D.4, (copy at A.377), which purports to be part of the record of the proceedings at the time, - and which I accept as such - I am quite satisfied that the Adjudicating Officer informed the Plaintiff that he convicted him on the 1st charge, and that the plea in mitigation - recorded on Exhibit D.4 - was made by the Plaintiff in answer to that charge. I also accept the evidence of Mr. Strathairn that, although he did not expressly inform the Plaintiff that he proposed to recommend his dismissal, he made it abundantly clear to him that that, in fact, was what he intended to do, by informing him that he proposed to forward the case to be dealt with by the Commissioner of Police, since he did not consider that any action he might be empowered to take would be fitting in such a serious case. The Plaintiff is an extremely shrewd, intelligent person. I have no doubt whatsoever that he knew perfectly well at that time that under the First Schedule to the Police Ordinance the only punishment which Mr. Strathairn, as Adjudicating Officer, was not empowered to award was dismissal. That punishment could only be awarded by the Commissioner of Police. The only possible reason, therefore, that Mr. Strathairn could have in forwarding the case to be dealt with by the Commissioner of Police was because he intended to recommend that the appropriate punishment was dismissal.

12. On the 16th day of May, 1958, the Plaintiff wrote to the Commissioner of Police (letter at A.70), appealing against the conviction and sentence. In the course of that letter he referred to the fact that on the 1st charge judgment against him had been reserved and on the 2nd charge he had been awarded a severe reprimand. He received no reply to, or acknowledgment of, that letter. In paragraph 4 of the Statement of Defence the remarkable explanation is put forward that "no acknowledgment or reply was sent to the Plaintiff for the reason that Regulation 15(1) of the Police Regulations, 1952, at that time provided that an appeal shall be sent to the Chief Secretary and not to the Commissioner in respect of a Superior Police Officer who has been awarded dismissal or reduction in rank". One might, perhaps, have thought that

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a Police Officer, dismissed from service, might have been afforded the elementary courtesy of a reply to his letter and a brief statement as to the correct procedure to be followed by him if he wished to lodge an appeal.

13. On the 23rd day of May, 1958, Mr. Strathairn forwarded the records of the two charges to the Commissioner of Police, together with his recommendation for dismissal on the original charge and his award of a severe reprimand on the additional charge. The letter also contains his detailed comments on the credibility of the witnesses he had heard. (See A.362-364).

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On the 5th day of June, 1958, Mr. Yates, acting on behalf of the Deputy Commissioner of Police, replied to Mr. Strathairn's letter, enclosing his own written comments - approved by the Deputy Commissioner of Police - on the disciplinary proceedings held by Mr. Strathairn. As a direct consequence of Mr. Yates's comments - and upon the instructions of the Deputy Commissioner of Police - Mr. Strathairn, as Adjudicating Officer, reopened the proceedings for the purpose of hearing and recording the evidence of the two accused persons in the forged lottery tickets case and for the production and inclusion of their original statements to the Board of Inquiry. Copies of those original statements were furnished to the Plaintiff before the hearing. He was present at the resumed hearing when the evidence of the two witnesses was taken and had ample opportunity to cross-examine, and did, in fact, cross-examine, them. The additional evidence was returned to the Commissioner of Police.

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On the 27th day of June, 1958, the Commissioner of Police formally approved the recommendation for dismissal of the Plaintiff made by the Adjudicating Officer, (see A.132) following upon his conviction upon the original charge. On the 7th day of July, 1958, that order of dismissal was formally notified to the Plaintiff by the Chief Police Officer, Perak. (See A.77-78).

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14. On the 14th day of July, 1958, the Plaintiff lodged his appeal. Since he was uncertain who was at that time the appellate authority he

sent copies of his appeal both to the Minister for Defence and the Police Service Commission. On the 29th day of July, 1959, - which was over a year after he had lodged his appeal - he received a letter (see A.204), emanating from the Secretary of the Police Service Commission, informing him that his appeal had been dismissed.

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10 15. Mr. Jag-Jit Singh's argument on this aspect of the case is that the Plaintiff, in breach of the provisions of Article 135(2) of the Constitution, had been dismissed without being given a reasonable opportunity of being heard both (a) before conviction and (b) After conviction and before sentence.

20 The argument put forward on ground (a) is that copies of various statements made by witnesses and copies of Police documents for which he had asked before his trial as being relevant to his defence were either not supplied to him at all, or supplied too late to give him an adequate opportunity to prepare his defence. Subject to one vitally important qualification, to which I shall later refer, I am satisfied that copies of all documents relevant to his defence were supplied to him, and I find no substance in this contention.

30 As to ground (b), Mr. Jag-Jit Singh submitted on the authority of the decision of the Privy Council in the case of the High Commissioner for India v. I.M. Lall (1) that the Plaintiff had a right to be heard both at the time when the charges against him were being inquired into by the Adjudicating Officer and after conviction when the question arose as to the proper punishment to be awarded. I accept that as correct. I have already said that I am satisfied that the Adjudicating Officer, after notifying the Plaintiff that the case against him on the original charge had been proved, intimated to him sufficiently clearly that in view of the serious nature of the charge he proposed to recommend his dismissal. The Plaintiff was then asked if he had anything to say and what he did say was duly recorded by the

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(1) (1948) A.I.R. (P.C.) Vol.35, p.121).

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Adjudicating Officer and forwarded to the Commissioner of Police, in due course, together with the record of the case, for his consideration as to whether or not he should confirm the recommendation for dismissal. In my view that was a sufficient compliance with the requirements of Article 135(2). Mr. Jag-Jit Singh submitted that before the Commissioner of Police confirmed the recommendation for dismissal he should have given the Plaintiff a further opportunity to show cause why it should not be confirmed. No doubt the Commissioner of Police could have done so if he was left in any doubt on the facts of the case as to the appropriate punishment to be awarded. But it seems to me that that was a matter entirely for his discretion, and that it was not incumbent upon him to go beyond the plea in mitigation of sentence made by the Plaintiff and already on the record before him.

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16. But, to my mind, the most serious aspect in the case lies in the fact that the Plaintiff, although furnished with copies of the statements made by the witnesses before the Board of Inquiry, was not furnished with a copy of the Findings of that Board. On the other hand, a copy of those Findings was supplied to the Adjudicating Officer before the hearing of the disciplinary charges, and was before him throughout those proceedings. These Findings, careful and exhaustive as they were, dealt in detail with the evidence of each witness heard by the Board and expressed views as to the credibility of each witness, and the weight to be attached to his statement. In the result they presented a most damning indictment against the Plaintiff as an unscrupulous scoundrel who had suborned witnesses, both Police and civilian, to commit perjury and who was "prepared to go to any lengths to add to his reputation as a successful investigator". That was the picture presented to the Adjudicating Officer, Mr. Strat-hairn, by the Findings of the Board of Inquiry before he commenced to hear the charges against the Plaintiff. The charges, although relatively trivial at first sight, involved a repetition by these witnesses of the statements they had given before the Board of Inquiry, including the very serious allegations against the Plaintiff.

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10 It is an elementary principle of law in criminal cases that, subject to certain exceptions, the bad character or previous convictions of an accused person standing trial on a charge or charges preferred against him shall not be disclosed to the tribunal during the course of his trial on those charges, and an appellate Court will generally interfere and quash a conviction, or order a retrial, in cases where that strict principle has been infringed. The reason for the rule is, of course, that the introduction and inclusion of such evidence may tend to prejudice the tribunal against the accused in the charge or charges then under consideration. In the present case the Adjudicating Officer had before him the unanimous Findings of the Board of Inquiry. Those Findings dealt in detail with precisely the same evidence as would be, and was, called before the Adjudicating Officer on the disciplinary charges to be preferred against the Plaintiff, and dealt with the credit and credibility of each witness. It seems to me quite impossible to say that those Findings must not inevitably have prejudiced the mind of the Adjudicating officer against the Plaintiff in relation to the disciplinary charges preferred against him. I do not for a moment suggest that on the evidence that he heard he would not have come to precisely the same finding on the disciplinary charge. But the very fact that he was furnished with, and read, the Findings of the Board must, in my view, to put it at its lowest, have created a very real likelihood that he would have a pre-determined bias or - to use the words of Lord O'Brien, C.J., in the case of R. v. Queen's County, JJ.,⁽²⁾ "an operative prejudice, whether conscious or unconscious" against the Plaintiff in respect of the disciplinary charges upon which he was to adjudicate.

40 It is, I think, important to consider for a moment Mr. Strathairn's own position at the time he was informed in writing by Mr. Yates on the 12th March, 1958, that he was personally required to act as Adjudicating Officer in the disciplinary charges to be heard against the Plaintiff. He had just been appointed to act as Chief Police Officer, Penang, during the absence

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(2) ((1908) 2, I.R., 285, at p.294).

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on leave of the substantive holder of that appointment. Prior to that he had been Officer i/c Criminal Records Office and Police Photographs Branch, Kuala Lumpur. Subsequent to this acting appointment as Chief Police Officer, Penang, he was to take over as Chief Police Officer, Kedah. It was, as I understood him to say, the first disciplinary charge against a Superior Police Officer that he had experienced. The Board of Inquiry consisted of three Senior Police Officers presided over by Mr. Yates, Senior Assistant Commissioner. The letter appointing Mr. Strathairn as Adjudicating Officer and containing certain instructions, and enclosing the Findings of the Board of Inquiry, had been signed by Mr. Yates. I do not for a moment suggest that the proceedings were not conducted by the Adjudicating Officer with the maximum fairness and impartiality nor, I repeat, do I suggest that on the evidence called before him he was not perfectly entitled to find the charges against the Plaintiff fully proved and to recommend his dismissal. But the inference appears to me irresistible that his mind must have been seriously prejudiced, whether consciously or unconsciously, against the Plaintiff by the most damning Findings that he had before him contained in the unanimous Report of the Board of Inquiry presided over by Mr. Yates. In my view, it was contrary to the fundamental principles of justice which govern a fair trial that the Adjudicating Officer should have had before him, both before and during those disciplinary proceedings, the wholly adverse Report of the Board of Inquiry against the accused person whom he was then trying on these charges.

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But the matter does not end there. Whilst the Adjudicating Officer had before him a copy of these Findings no such copy had been supplied to the Plaintiff even though they most materially and injuriously affected him not only in relation to the disciplinary charges which he was then facing, but also as to the matter of sentence upon his conviction on those charges. He had no opportunity to deal with the Findings contained in that Report or to refute or challenge them in any way.

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In my view, the furnishing of a copy of the

Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the Plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the Plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal. I think it right that I should say, and I stress the fact, that I am entirely satisfied that, in sending a copy of the Findings of the Board of Inquiry to the Adjudicating Officer, there was no intention whatsoever on the part of those responsible to prejudice the mind of the Adjudicating Officer in relation to the charges he was to try. I am fully satisfied that the Findings, together with the copies of the statements of the witnesses heard by the Board of Inquiry, were sent to the Adjudicating Officer in what was considered to be the normal course of procedure. I would only add that, in view of the very serious Findings by the Board of Inquiry and its clear conclusions that the Plaintiff was a thoroughly unscrupulous Police Officer and, by necessary implication, wholly unfit to remain a member of the Federation of Malaya Police Force, it is with the greatest possible regret that I have arrived at my conclusions in this case.

17. There remains one last matter which I should more logically have dealt with at the commencement of this judgment, namely whether this Court has any jurisdiction to entertain these proceedings in the form in which they are before it, or whether the Plaintiff's remedy, if any, is not by way of certiorari proceedings.

As Mr. Jag-Jit Singh has pointed out, the Plaintiff's Statement of Claim in this case closely approximates the claim of the plaintiff in the case of the High Commissioner for India v. I.M. Lall already cited. In that case Their Lordships of the Privy Council, by their decision, approved the order of the High Court granting a declaration that the purported dismissal of the plaintiff was wrongful, void, illegal and inoperative and that the plaintiff

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was still a member of the Indian Civil Service.

In the later case of N.W.F. Province v. Suraj Narain, (3) the Privy Council again upheld the decision of the Federal Court of India granting a declaration that the dismissal of the Plaintiff, a Sub-Inspector of Police, was void and inoperative.

In the case of Cooper v. Wilson, (4) the plaintiff, a Sergeant in the Liverpool Police Force, claimed a declaration that he had not been validly dismissed from the Force, but that he had duly resigned and was in consequence entitled to be repaid certain moneys that had been deducted from his pay. In considering the argument that, even assuming his dismissal was unauthorised, which was denied, the plaintiff's remedy was to appeal to the Secretary of State, or alternatively, to apply by way of certiorari to quash the order of dismissal, Greer, L.J. stated in the course of his judgment, at page 321:-

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"It would be idle for a plaintiff who is alleging that he has never been dismissed to appeal to the Secretary of State, nor do I think that the fact that that is a remedy which he could take prohibits his access to the Court for a declaration that his dismissal was invalid, nor do I think that the power which he undoubtedly possessed of obtaining a writ of certiorari to quash the order for his dismissal prevents his application to the Court for a declaration as to the invalidity of the order of dismissal".

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He then went on to say that the powers of the Court to grant declarations had been greatly extended in recent years.

Again, in the case of Barnard & Ors. v. National Dock Labour Board & Anor., (5) the Court of Appeal held that the High Court had the power to make a declaration relating to the validity of the decision of a statutory tribunal. In the course of his judgment Denning, L.J. said, at page 1119 :-

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- (3) ((1949) A.I.R., (P.C.) Vol.36, 113).
 (4) ((1937) 2, K.B., 309).
 (5) ((1953) 1, All E.R., 1113);

"This is not a case of a tribunal which has a lawful jurisdiction and exercises it; it is a case of a man acting as a tribunal when he has no right to do so. These Courts have always had jurisdiction to deal with such a case".

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10 Lastly, I would refer to the case of Healey v. Minister of Health,⁽⁶⁾ where Denning, L.J., referring to Barnard's case cited above, went on to say, at page 227:-

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"I take it to be clear that the Queen's Courts can grant declarations by which they pronounce on the validity or invalidity of the proceedings of statutory tribunals".

20 For these reasons I am of the opinion that the Plaintiff is entitled to succeed in this action. There must accordingly be a declaration for the Plaintiff in the terms as prayed in paragraph (1) of the Prayer in his Statement of Claim, together with an order as prayed that an account be taken of the moneys due to the Plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from the 7th day of July, 1958, to the date of payment, and an order for such payment to be made of such sum due after the taking of such account. The matter will be remitted to the learned Senior Assistant Registrar for such account to be taken. The Defendants must pay the Plaintiff's costs of this action.

30 Dated at Penang this 24th day of March, 1960.

(Signed) I.C.C. Rigby,
JUDGE.

40 TRUE COPY
SD: CHEE TIN POH
Secretary to Judge,
Supreme Court,
Penang.
24th March, 1960.

Mr. Jag-Jit Singh for Plaintiff.

Mr. L.A. Massie, Senior Federal Council, for Defendants.

Solicitor for Plaintiff: Jag-Jit Singh Esq.

In the Supreme
Court of the
Federation of
Malaya

NO.14- ORDER

IN THE SUPREME COURT OF THE FEDERATION OF
MALAYA

No.14

IN THE HIGH COURT AT PENANG
CIVIL SUIT NO: 232 OF 1959

Order for
Judgment
24th March 1960

Between B. Surinder Singh Kanda Plaintiff

And

The Government of the
Federation of Malaya Defendant

BEFORE THE HONOURABLE MR. JUSTICE RIGBY
THE 24TH DAY OF MARCH, 1960.

10

IN OPEN COURT

This action coming on for hearing on the 9th, 10th, 11th and 12th day of December, 1959, and the 12th, 13th and 16th day of January, 1960 in the presence of Counsel for the Plaintiff and for the Defendants, upon reading the Pleadings filed and upon hearing the evidence adduced on behalf of the Plaintiff and the Defendants and what was alleged by Counsel aforesaid THIS COURT DID ORDER that this action should stand for Judgment and the same coming on for Judgment accordingly this day THIS COURT DOTH ORDER AND DECLARE that the dismissal of the Plaintiff from the Federation of Malaya Police Force purported to be affected by one W.L.R. Carbonell, the Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958 is void, inoperative and of no effect, and that he is still a member of the said Force AND THIS COURT DOTH FURTHER ORDER that the Defendants do pay to the said Plaintiff all arrears of pay, allowances and other emoluments

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10 due and owing to him as an Inspector in the said Force from the date of the said purported dismissal AND THIS COURT DOTH FURTHER ORDER that the Senior Assistant Registrar do take an account of what is due to the Plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from the 7th day of July, 1958, to the date of payment and upon such accounts being taken THIS COURT DOTH FURTHER ORDER that the Defendants do pay to the Plaintiff the sum found due to the Plaintiff by the Senior Assistant Registrar AND THE COURT DOTH FURTHER ORDER that the costs be taxed and paid by the Defendants to the Plaintiff on the Higher Scale of the Rules of the Supreme Court 1957 AND THE COURT DOTH LASTLY ORDER that the execution on the declaratory Order and consequential Orders be stayed pending the filing of Appeal and until the decision of the Court of Appeal provided the Defendants do pay the Plaintiff costs when taxed on the undertaking of the Plaintiff's Solicitor to refund same in the event of the Appeal being allowed.

20

By the Court,

L.S.

sgd. Ajaib Singh

Senior Assistant Registrar

In the Supreme
Court of the
Federation of
Malaya

No.14

Order for
Judgment
24th March 1960
continued

30 Entered at Penang this 24th day of March, 1960,
No. 35/60

In the Court
of Appeal at
Penang

No.15

Notice of
Appeal
21st April 1960

NO.15- NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT PENANG
F.M. CIVIL APPEAL NO.30 OF 1960.

BETWEEN

The Government of the
Federation of Malaya ... Appellant

AND

B. Surinder Singh Kanda ... Respondent

(In the Matter of Penang Civil Suit No.232 of 1959 . 10

BETWEEN

B. Surinder Singh Kanda ... Plaintiff

AND

The Government of the
Federation of Malaya ... Defendant)

NOTICE OF APPEAL

Take Notice that the Government of the
Federation of Malaya being dissatisfied with the
decision of the Honourable Mr. Justice Rigby
given at Penang on the 24th day of March, 1960,
appeals to the Court of Appeal against the whole
of the said decision. 20

Dated this 21st day of April 1960.

Sgd: L.A. Massie.
Senior Federal Counsel
Federation of Malaya.
Counsel for Appellant.

To: 30
The Senior Assistant Registrar,
Supreme Court, Penang.
Mr. B. Surinder Singh Kanda,
c/o Mr. Jag. Jit Singh,
Advocate & Solicitor,
Penang.

The address for service of Mr. Massie, Senior

Federal Counsel, Federation of Malaya, Counsel for Appellant; is c/o Legal Adviser's Chambers, Supreme Court, Penang.

In the Court of Appeal at Penang

Received this 21st April, 1960.
Deposit of \$500/- lodged in Court this 21st day of April, 1960.
Entered in the List of Civil Appeal this 21st day of April, 1960.

No.15

Notice of Appeal
21st April 1960
continued

Sgd: Ajaib Singh
Senior Assistant Registrar.

10

NO.16- MEMORANDUM OF APPEAL

No.16

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT PENANG
F.M. Civil Appeal No. 30 of 1960

Memorandum of Appeal
10th June 1960

Between

The Government of the
Federation of Malaya ... Appellant

And

B. Surinder Singh Kanda ... Respondent

MEMORANDUM OF APPEAL

The Government of the Federation, the Appellant abovenamed, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Rigby given at Penang on the 24th day of March, 1960, on the following grounds:

1. The learned Judge erred in law in holding that the dismissal of the Respondent by the Commissioner of Police was void and inoperative on the ground that, by reason of the provisions of Articles 135, 144 and 162 of the Federal Constitution, the Commissioner had no power to dismiss the Respondent at the relevant time.

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In the Court
of Appeal at
Penang

No.16

Memorandum of
Appeal
10th June 1960
continued

2. The learned Judge was wrong in law in holding that the furnishing to the Adjudicating Officer appointed to hear the disciplinary charges of a copy of the Findings of the Board of Inquiry containing conclusions prejudicial to the Respondent, coupled with the fact that no such copy was furnished to the Respondent, constituted a failure to afford to the Respondent a reasonable opportunity of being heard in compliance with the provisions of Article 135(2) of the Federal Constitution. 10

3. The learned Judge erred in law in making a declaration that the Respondent remained a member of the Police Force after the institution of the suit.

4. The learned Judge erred in law in ordering an account and payment to the Respondent of salary and emoluments due to him as an Inspector of the Federation Police Force.

Dated this 10th day of June, 1960. 20

Sd. C.M. Sheridan
Attorney-General
Solicitor for the Appellant.

To

The Senior Assistant Registrar,
Court of Appeal,
Supreme Court,
PENANG.

And to

Jag Jit Singh Esq.,
Solicitor for B. Surinder Singh Kanda. 30

The address for the service of the appellant
is -
c/o The Legal Adviser's Chambers,
Penang.

Filed this day of June, 1960.

No.17 - NOTICE OF CROSS APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT PENANG

F.M. CIVIL APPEAL NO.30 OF 1960

In the Court
of Appeal at
Penang

No.17

Notice of
Cross-Appeal
17th June 1960

Between

The Government of the
Federation of Malaya

Appellant

And

B. Surinder Singh Kanda

Respondent

10

(In the matter of Penang High
Court Civil Suit No.232 of 1959

Between

B. Surinder Singh Kanda

Plaintiff

And

The Government of the
Federation of Malaya

Defendant)

NOTICE OF CROSS-APPEAL

20

Take Notice that, on the hearing of the
above appeal, B. Surinder Singh Kanda, the Re-
spondent above-named will contend that the de-
cision of the Honourable Mr. Justice Rigby --
given at Penang on the 24th day of March, 1960
should be upheld not only on the grounds re-
lied on by the learned Judge but also on the
following grounds herein set out;-

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1. The learned Judge erred in fact in
finding that the Adjudicating Officer on
the 10th May, 1958 sufficiently indicated
to the Respondent on which of the first
two alternative charges he had been found
guilty or that the Respondent knew that
it was proposed to award the punishment

In the Court
of Appeal at
Penang

No.17

Notice of
Cross-Appeal
17th June 1960
continued

of dismissal before he was informed on the 7th day of July 1958 by the Chief Police Officer Perak, that this Punishment had been awarded.

2. The learned Judge erred in law :-

(a) in omitting to find that the failure to produce the original of George Town I.P. 1025/1957 at the Orderly Room proceedings so vitiated the said proceedings as to deny to the Respondent a reasonable opportunity of being heard within the meaning of Article 135 (2) of the Constitution, and

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(b) in holding that the bare recording of a statement in mitigation made at the Orderly Room proceedings sufficiently complied with the provisions of Article 135(2) of the Constitution so as to afford a reasonable opportunity of being heard.

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3. The learned Judge erred in law in omitting to find that the Respondent was entitled to Judgment on the state of the Pleadings alone.

Sgd:

Solicitor for the Respondent.

Dated at Penang this 17th day of June, 1960.

To:

The Appellant abovenamed or his Solicitor,
c/o Legal Adviser's Chambers,
Penang.

30

The address for service of the Respondent is at the Office of his Solicitor, Mr. Jag-Jit Singh, Advocate and Solicitor of No. 25, Light Street, Penang.

No.18 - REASONS FOR JUDGEMENT OF COURT OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

In the Court
of Appeal at
Kuala Lumpur

F.M. Civil Appeal No.30 of 1960.

No.18

The Government of the
Federation of Malaya

Appellant.

vs.

B. Surinder Singh Kanda

Respondent

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
1960.

Coram: Thompson, C.J.
Hill, J.A.
Neal, J.

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JUDGMENT OF NEAL, J.

The Respondent in his statement of Claim claimed that he was entitled to a declaration together with ancillary relief to the effect that his dismissal alleged to have been effected by the then Commissioner of Police on the 7th July, 1958, was void, inoperative and of no effect, and that he is still (as at the date of his statement of claim on 10th October, 1959) a member of the said force. His claim that it was void - I think without any injustice to him - may be adequately summarised as being based upon the following grounds :-

20

(i) that the Constitution of the Federation of Malaya in giving jurisdiction to a Police Service Commission had impliedly repealed that part of the Police Ordinance which gave jurisdiction to the Commissioner of Police;

30

(ii) that the Respondent had not been given his rights under the Constitution, that is to say, he was not given a reasonable opportunity of being heard. This ground he sub-divided into two distinct allegations -

In the Court
of Appeal at
Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
1960
continued

(a) that he had not been supplied with a copy of the findings of an earlier Board of Enquiry not in respect of the actions of any particular officer but in respect of the actual investigation which formed the basis of the charges upon which he was found by a separate tribunal to be guilty;

and

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(b) that he had not been informed before his plea in mitigation of the intended punishment - to put it another way, that he was entitled to be informed of the intended punishment and thereafter to be heard on that particular question.

The Appellant in his statement of defence denied the lack of jurisdiction in the Commissioner of Police and contended that by virtue of the provisions of the Constitution the right or power of the Commissioner of Police to dismiss as it existed prior to Merdeka Day was continued in force by the operation of Article 144(1) of the Constitution, and that there had been no failure to comply with the provisions of Article 135(1). (A point was made before us that the Appellant having admitted paragraph 7 of the statement of claim which read: "On the 7th July, 1958, the said W.L.R. Carbonell, Commissioner of Police, was an authority subordinate to the said Commission" had admitted all that was necessary to justify or to support the decision in favour of the Respondent. It is true in paragraph 3 of the amended statement of defence the Appellant/Defendant does in terms state, inter alia, paragraph 7 of the Plaintiff's statement of claim is admitted. However, in my opinion, this point has no merit when one considers paragraph 5 of the statement of claim and the terms in which in paragraph 2 of the amended statement of defence the Appellant/Defendant does not admit the said paragraph 6. Read as a whole the statement of defence is, in my opinion, clear that the Appellant/Defendant is not admitting that the Police Service Commission is or was at the date of the dismissal the body entitled to appoint an officer of the rank of the Respondent.)

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At the conclusion of the evidence, Rigby, J., reserved his decision and in a written judgment subsequently delivered made the following orders:

In the Court
of Appeal at
Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
1960
continued

- 10 (i) the declaration as asked for but not limited in effect to the date of the statement of claim. (In fairness to his Lordship it ought to be made clear that in his judgment he merely makes the declaration as prayed in the state-
20 ment of claim. The difficulty that arises in this case only arises because the Senior Assistant Registrar in issuing the formal order of the Court pursuant to that judgment uses the same words, namely, "and that he is still a member of the said force", which must of course be construed with reference to the actual date of Rigby, J's. judgment. In my opinion the criticism of the judgment of Rigby, J. on this account must be read in conjunction with the grave doubt that I have whether Rigby, J. did say or intended to say in the declaration that he made as opposed to the declaration which the Senior Assistant Registrar says he made that the Respondent was as at the 24th March, 1960, still a member of the force).

- 30 (ii) an account to be taken of the moneys due to the Respondent from the 7th July, 1958, to the date of payment and the payment of such sum due after the taking of such account.

- (iii) remitting the proceedings to the Senior Assistant Registrar to take such an account.

- (iv) costs to the Plaintiff.

40 In the course of his judgment dealing with the question of whether or not Respondent was entitled to the declaration he asked for the learned judge reached the following conclusions:-

- (i) that on a proper construction of the

In the Court
of Appeal at
Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
1960
continued

Constitution without exercising the special power given to the Court by Article 162(6) the body having the power to appoint a police officer of the grading of the Respondent was the Police Service Commission and not the Commissioner of Police.

- (ii) that if that conclusion were incorrect the Court should exercise its powers under Article 162(6) and modify the Police Ordinance to the extent of repealing the powers of the Commissioner of Police. 10
- (iii) that there was no substance in the argument on behalf of the Respondent based upon Article 135(1), that the failure to inform him of the punishment and to give him the right to be further heard had constituted a breach of Article 135(1). 20
- (iv) that the adjudicating officer who presided at the disciplinary proceedings against the Respondent as opposed to the previous Board of Enquiry must be held to have been biased because he had received from one his senior officers the findings of the Board of Enquiry in which that senior officer had expressed a view that was condemnatory of the Respondent; that this document had not been given to the Respondent and that he had had no opportunity of being heard upon it and the inference to be drawn from it. 30

The Appellant appeals against the decision on the following broad grounds:-

- (i) that by virtue of Article 144(1) that the Commissioner of Police was at the relevant date a person entitled to dismiss and that no jurisdiction to dismiss or even to appoint was given to the Police Service Commission by virtue of the Constitution. 40
- (ii) that the Court below was wrong in

exercising its alleged powers under Clause 6 of Article 162 since it was not necessary for bringing the Police Ordinance into accord with the Constitution.

In the Court
of Appeal at
Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
1960
continued

- 10 (iii) that the Respondent having been given an opportunity after he had been found by the adjudicating officer guilty of one charge to plead in mitigation he was not entitled having made that plea in mitigation to a further opportunity of being heard after the adjudicating officer had reached a conclusion as to the appropriate punishment he should recommend.
- 20 (iv) that the possession of the findings of the Board of Enquiry and the knowledge of their contents before commencing the hearing did not in itself, and standing alone, constitute bias to the extent required in accordance with the principles of natural justice to declare the proceedings void.
- 30 (v) that the learned judge in the Court below was wrong in law in extending his declaration beyond the date in the statement of claim (I am not clear whether the Attorney-General on behalf of the Appellant did not during the course of argument accept the position that that date might be capable of extension to the date on which the hearing of evidence was concluded).
- 40 (vi) that the learned judge in the Court below was wrong in law making in any orders as regards payment of salary or the remitting of the case to the Senior Assistant Registrar for enquiry as to quantum and naturally an entry of the judgment for the amount found, if not disputed.

In respect of this particular part of his appeal he made it clear and, on at least two occasions, informed the Court that if the Respondent accepted his view in this respect he would

In the Court
of Appeal at
Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal, J.)
14th November
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continued

undertake that if the constitutional and bias questions were decided against the Appellant to see that payment of salary up to the date of the Court of Appeal judgment was made and thus shorten the proceedings before the Court of Appeal by rendering it unnecessary to determine these questions. Unfortunately mainly because the terms and the ramifications that would follow from their acceptance were not clearly understood by the Respondent and his counsel this offer or undertaking was not accepted.

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In dealing with the questions which arise for determination in his appeal, I propose to deal in the first place with the question of whether or not the admitted failure of the adjudicating officer, Mr. Strathairn, to inform the Respondent of the punishment he proposed to recommend and give him the right to make a further statement in respect of that constituted a breach of the provisions of Article 135(1) of the Constitution. Secondly, whether the possession of and the knowledge of the contents of the findings of the Board of Enquiry must be assumed to have produced a bias in the mind of the adjudicating officer, Mr. Strathairn.

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As to the first point the Respondent relies upon, as did the judge in the Court below, the Indian decisions. For myself, I derive no assistance from the Indian decisions having regard to the differences between the provisions of the Constitution in India and the Constitution here. It is not in dispute that the Respondent had the opportunity to make and did make before the adjudicating officer after he had reached a finding of guilt a plea in mitigation. Put in other words, he had received and exercised the same rights as is accorded to an accused person in the Courts and I see no reason to so widely construe Article 135(1) as to give him the additional right which is sought.

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As to the question of bias arising out of the possession and knowledge of the contents of the findings of at least one superior officer condemning the Respondent, I was at first inclined to the view that there might be some substance in this as a ground for declaring the proceedings before the adjudicating officer

void. This initial impression was due to a consideration of the words of Lord Thankerton in Franklin and Others v. Minister of Town and Country Planning(1) when he said: "My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute." On the basis of that quotation and in particular the reference to 'coming to his adjudication with an independent mind' inclined me to support the view on this question taken by the judge in the Court below. However that quotation must read in the light of his Lordship's subsequent words, "I am therefore of the opinion that the first contention of the appellants fails, in that they have not established either that in the respondent's speech he had forejudged any genuine consideration of the objections or that he had not genuinely considered the objections at the later stage when they were submitted to him." In considering these latter words it is to be remembered that the complaint in Franklin's case (supra) was that the officer appointed to consider objections against a town planning plan had prior to his commencing any such hearing publicly made a statement in strong terms of his intention to ensure by legislation the carrying out of the new planning despite the objections. His speech was in such strong words that Lord Thankerton in his judgment quoted from speech and the remark of 'gestapo' by a member of the audience. It follows, in my opinion, from the whole of the judgment of Lord Thankerton that there must be an allegation of bias by the Plaintiff/Respondent supported by either evidence of bias or evidence from which an inference in the terms of section 3 of the Evidence Ordinance can be inferred. This, I think, is supported by the earlier judgment in The

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Judgment of
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No.18

Reasons for
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Neal, J.)
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1960
continued

Colonial Bank of Australasia v. Willan⁽²⁾.

Bearing in mind what I have said earlier concerning the pleadings and the evidence and the fact that so far as the record is concerned this question appears to have been raised by the learned judge in the Court below for the first time in his judgment, I have come to the conclusion that there is no evidence upon which there could be based a finding that the adjudicating officer actually had been, or could be assumed to be, biased to the extent of causing a breach of the rules of natural justice.

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In respect of these findings it is to my mind important to remember firstly that at no stage of the proceedings either in the Court below or before us was it denied and, in fact, was admitted that the Respondent had not received a copy of these findings. Secondly, that nowhere on the record of the proceedings in the Court below and in particular in the evidence does the Respondent allege that Mr. Strathairn, the adjudicating officer, had by virtue of his having in his possession and having read these findings a bias towards the Respondent. To the contrary the Respondent's evidence to my mind makes it clear that he was not alleging anything against Mr. Strathairn and his adjudication beyond the two facts that he did not give him an opportunity after a decision had been come to by him to be heard on the question of dismissal, and that the Respondent was deprived by the non-supplying of a copy of these findings of being heard in answer to the allegations in the findings.

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An important fact on the record of this case going to establish bias or lack of bias is that it is clear that the adjudicating officer declined to call - although he had been expressly directed by his senior officer - to call at the disciplinary proceedings - two witnesses whose evidence he described as being too prejudicial to the Respondent.

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Finally in dealing with the question of bias I bore in mind the words of Viscount Cave L.C. in Frome United Breweries Company Limited v. Keepers of the Peace and Justices for County Borough of Bath (3) :

(2) (1873-74) L.R.P.C. Vol. V. 417.
(3) (1926) A.C. 586, 590, 591.

10 " My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and it has been held over and over again that, if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others. Thus in *Reg. v. London County Council Ex parte Akkersdyk*, where a committee of the London County Council had recommended that a certain music and dancing licence should not be granted, and some members of the committee had instructed counsel to represent them before the county council and to oppose the application for the licence, it was held that the presence at the hearing of those members of the Committee who had instructed counsel to oppose the application vitiated the proceedings, and a rule for a mandamus to hear and determine the application according to law was made absolute. In an Irish case, *Reg. (Monaghan County Council) v. Local Government*, where the authority concerned was the Local Government Board of Ireland, a similar decision was reached.

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30 Instances of the application of the like rule to licensing justices in England are *Rex v. Sunderland Justices* and *Colchester Brewing Co. v. Tendring Licensing Justices*.

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From the above rule it necessarily follows that a member of such a body as I have described cannot be both a party and a judge in the same dispute, and that if he has made himself a party he

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continued

cannot sit or act as a Judge, and if he does so the decision of the whole body will be vitiated."

In considering that dicta I bore in mind the facts of that particular case, namely, that before hearing three members of the compensation tribunal had made themselves a party to the proceedings by having instructed in their capacity of justices a solicitor to oppose the renewal of the licence upon which the right or claimed compensation was based. Viscount Cave in that part of his judgment which I have quoted referred to the fact that in such a position a bias must be assumed. Having regard to all the facts that appear on the record of this case so far from being satisfied that a bias as against Mr. Strathairn must be assumed on this particular ground, I am satisfied from the fact that the Respondent did not allege such a personal bias and from the fact that notwithstanding his superior's directions Mr. Strathairn declined to call the two witnesses whose evidence was unduly prejudicial to the Respondent that there was in fact and in law no sufficient bias either proved or to be assumed that Mr. Strathairn did not decide the question of guilt or otherwise strictly impartially.

As regards the constitutional questions that arise out of this appeal, namely, as at the relevant date who had the right to appoint as well as dismiss an officer of the grading of the Respondent; and whether the learned judge in the Court below properly exercised the powers given to him by Clause 6 of Article 162, I approach these questions with considerable diffidence. My Diffidence is caused not only by my endeavours to construe the Constitution as a whole but also by the knowledge of the fact that the view I hold is not shared by the other members of the Court of Appeal. I might at this stage state that the Court did not receive from counsel appearing before it on the constitutional questions the help that it was entitled to have received. Our attention was not drawn to Article 4 of the Constitution (which would become relevant if one accepted the submission on behalf of the Appellant) nor to Article 176 (which is most important when one remembers that both Inspector

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10 Kanda (page 33 of the Record) and the Commissioner of Police Mr. Carbonell were pre-Merdeka officers). Also attention was drawn in the written submissions of the Attorney-General to the distinction between existing law on the one hand and Federal or State law on the other hand, but no attempt was made to develop this argument. As regards Article 4 the attention of the Attorney-General's junior - after the Attorney-General had left the Court - was directed to this Article and it was dealt with by him. But at no time did any of the counsel draw our attention to the existence of Article 176 so that I find myself in the position of having to consider it without the assistance of counsel's argument.

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of Appeal at

Kuala Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
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continued

20 In coming to my conclusions as to the interpretation to be placed upon Article 144 of the Constitution I have borne in mind the dicta that have fallen from the lips of many judges in the United Kingdom that one should not in interpreting a statute take the words out of their context and endeavour to assign to them what has been described as the ordinary everyday meaning. As has been said, it is extremely doubtful whether any set of words has anything such as an ordinary everyday meaning but that the entire provisions have to be considered and the meaning obtained therefrom. In this connection I will
30 quote the words of Lord Greene in In re-Bidie⁽⁴⁾:
"The first thing to be done, I think, in construing particular words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning in the sense that their meaning is entirely independent of their context. The method of construing statutes that I myself prefer is not to take out particular words and attribute to them
40 a sort of prima facie meaning which may have to be displaced or modified, it is to read the statute, as a whole and ask myself the question In this statute in this context relating to this subject-matter, what is the true meaning of that word?". This, with respect, appears to me to have been the fallacy into which, as is apparent from his written submissions, the Attorney-General has fallen because he seeks amongst other

(4) (1949) 1 Ch. 121, 129.

In the Court
of Appeal at
Kuāla Lumpur

No.18

Reasons for
Judgment of
Court of Appeal
(delivered by
Neal J.)
14th November
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things to interpret Article 144 as it stands alone although he does add to that interpretation the statement based upon Article 162 that the existing laws continue in force and in effect. This is made, I think, extremely clear when he relies upon Article 162(1) standing alone and without any reference to Clauses 4 and 5. Again his method of approach to the problem has led to an overlooking of the point with which I shall deal later in detail that the jurisdiction of the Police Service Commission being given by Article 140 (and we are concerned with the original Article and not with its recent amendment) was granted to the Commission extending to all members of the Police service and not to gazetted police officers only. In Article 144(1) it is the duty which is made subject to the provisions of any existing law and the provisions of the Constitution. In my opinion there is a distinction between the terms, "jurisdiction," and "duty" - a jurisdiction may be given with limits placed upon the manner in which the duties are to be performed. It would, in my opinion, be correct to say that an unlimited jurisdiction is given but in the exercise of that jurisdiction, that is to say, in the performance of the duties limitations are either placed on the duty or the manner in which that duty is to be performed. This distinction is I think made clear especially in dealing with constitutions by Griffith, C.J. in D'Emden v. Pedder⁽⁵⁾ when he said, "It is only necessary to mention the maxim 'quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa valere non potest'. In other words, where any power or control is expressly granted, there is included in the grant, to the full extent of the capacity of the grantor, and without special mention, every power and every control the denial of which would render the grant itself ineffective. This is, in truth, not a doctrine of any special system of law, but a statement of a necessary rule of construction of all grants of powers, whether by unwritten constitution formal written instrument, or other delegation of authority, and applies from the necessity of the case, to all to whom is committed the exercise of powers of Government." The same distinction is, in my

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(5) (1904) 1. C.L.R. 91

opinion, made clear by the distinction which Atkin, L.J. draws in Rex v. Electricity Commissioners (6) between the legal authority to determine something and the duty to act pursuant to that authority. I have mentioned this at this stage solely with reference to my valuation of the Attorney-General's submissions. For myself, I consider that one is forced in construing Article 144 to construe it in conjunction with Articles 4, 140, 162 and 176. The interpretation that one reaches considering all of those Articles should then be tested as against the other and not the immediately relevant Articles in which the words, "subject to," appear in order to see how much damage one is forced, if at all, to do to the maxim that one ought to give in the one document or statute the same meaning to the same phrase throughout. Before one can come to any conclusion one has, to my mind, to consider what it is that is being done in the promulgating of a constitution. Before dealing with this, the Attorney-General in his submission suggested to the Court that some assistance in appreciating the historical approach to the problem could be obtained from paragraph 158 of the Report of the Reid Commission wherein the necessity for the continuance of the powers of the Commissioner of Police is referred to. For myself I prefer to leave the Reid Commission Report out of my considerations because whilst the Report does contain the quotation referred to by the Attorney-General it is equally true that when the Commission came to recommend a draft constitution it agreed on a form providing for a Police Commission of which the Commissioner was only one member out of three. This, in my opinion, completely negatives any value the quotation in the Report may have had. It cannot be overlooked as well that what has been described during the hearing as the body of founding fathers of the Constitution has by providing in the actual as opposed to the draft Constitution for a tribunal on which the Commissioner of Police has no voice whatsoever made clear their intention of acting contrary to the Report in this respect. To turn to my appreciation of the position before promulgation, it must, I think, be accepted that any state, sovereign or otherwise, has a constitution of sorts and if it is intended

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(6) (1924) 1 K.B. 171.

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to produce a fresh and new constitution, it must be accepted that the promulgation of a new constitution means the end of any laws existing on the date of promulgation of the new constitution and the cessation in office of and the loss of all powers or functions of officers and tribunals in service prior to the promulgation unless, and to the extent only, those powers are by the new constitution permitted to continue in existence. If the problem is approached from this angle, to my mind, it is clear the Constitution provides for a Police Service Commission whose jurisdiction (unlimited and unqualified) shall extend to all members of the police service, and the performance of its duties is subject to Article 144, and as I have pointed out Article 144 deals with the duty and the manner in which the jurisdiction is to be exercised but does not detract from the jurisdiction granted. It must also I think be borne in mind that having regard to the fact that on promulgation all existing laws unless saved cease to have any effect, and that all officers and tribunals necessary to the operation and normal functioning of a State cease to exist or to have any powers or functions, it is necessary to have provisions of a temporary and transitory nature in order to prevent the whole business of the State coming to a standstill. To take an illustration pertinent to our problem the Yang di-Pertuan Agong cannot function until he has been installed and taken the oath of office. Secondly, it is only thereafter he can appoint members of a Police Commission and there must of necessity be some time lag as well while the consent of the persons concerned is obtained. It is therefore not only in connection with the police force but in every sphere necessary to have some provisions in the Constitution enabling someone else during that "interregnum" to carry out the functions of Government and in particular to exercise the necessary control over members of the police force. That this is appreciated is shewn by the fact that the persons responsible for the Constitution have in Part XIII commencing with Article 162 provided, to quote the headnote, "Temporary and Transitional Provisions". When one reads Article 162 in its entirety and Article 176 one is forced to the conclusion that the words, "subject to existing law", mean no more than Denman,

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C.J. said they meant - in a case to which I shall refer later - namely, within the limits or limitations of practice. It was the Attorney-General's submission that no jurisdiction had been given to the Police Service Commission because its duty was subject to the existing law under Article 144 and that if the existing law provided for the exercise of power to appoint and dismiss by the Commissioner of Police he had the powers to appoint and the Commission had none. If that had been the intention of the persons responsible for the Constitution then I personally fail to see why there was any necessity for the inclusion of Article 176. On the other hand, if his submissions be not correct, both 176 and 162 become vitally necessary to cover the interim period. In my opinion the persons responsible for the Constitution intended to make that abundantly clear when they headed Part XIII, "Temporary and Transitional Provisions", that is to say, to enable the smooth transition from one constitution with its subordinate bodies to the new constitution with its fresh set of subordinate tribunals. It is made even clearer by Clauses 4 and 6 of Article 162. That, of course, brings us to the problem of when does a temporary and transitional provision under the Constitution cease to be effective. Before dealing with that it is pertinent I think to refer to the submission made in Court by the Attorney-General that the Police Service Commission had not come into existence or did not exist. This submission, in my opinion, was incorrect because Article 148(1) refers to the Commissions established under Articles 139 to 141 not I would point out to be established. Again it is to be noted that by gazette notification 733 - admittedly not published until 1960 - notification was given of the appointment by the Yang di-Pertuan Agong (the authority for appointment of members of the Police Service Commission) as from the date on which the Constitution came into force and effect. To return to the question of the length of time the temporary and transitional provisions continue in operation, I would say that, having regard to what one may describe as the facts of life affecting the Constitution and which I

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have referred, it was until the body or tribunal to whom under the Constitution the powers and functions are being transferred can operate. During the course of argument Article 4(1) came up for consideration and it was suggested that the words, "and any law passed after Merdeka Day which is inconsistent with this Constitution shall to the extent of the inconsistency be void," led to the inference by applying the maxim expressio unius exclusio alterius that as against existing law the Constitution was not supreme. I am unable to agree with this suggestion as in my opinion the Constitution "kills" existing law and that existing law can only survive by virtue of the provisions of the Constitution, that is to say, the validity in continuance of the existing law depends upon the Constitution itself. One can almost say it creates it or at least that it re-creates it. Again, to draw the inference that was suggested to my mind overlooks the elementary principle of constitutional law that a constitution especially a constitution in writing is fundamental. In my opinion after a consideration of the Constitution in its entirety the combined effect of Articles 140 and 144 is to create a Police Service Commission with jurisdiction over all members of the police service which Commission shall perform its duties in accordance with the principles of and the procedure created by existing law as at Merdeka Day.

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To test the conclusion to which I have come by following the method of approach adopted by the Attorney-General in his argument and endeavouring to give to the words, "subject to," their ordinary meaning, I have searched and I hope diligently - the various authorities in which the words, "subject to," have been the subject of construction by the Courts. The Attorney-General was content to rely upon one small quotation from an American work in which words and phrases judicially interpreted in America have been brought together under the appropriate headings. He relied upon one quotation only. Apart altogether from the inadvisability of relying upon an American work, a checking of the actual pages dealing with the phrase, "subject to", shews that the Courts in America (without checking in detail) have given many and varied interpretations to the phrase: one might almost

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say as many if not more has been given to them in the Courts of the British Commonwealth. My research in the law reports and text books of the British Commonwealth has shewn that the Courts have given to the words, "subject to," not one meaning but varied meanings. They range from the words, "subject to," having the effect of the words following it negating the statement preceding it as is particularly to be noticed in the long line of authorities dealing with the phrase, "subject to contract," "subject to lease," etc. This particular meaning of the phrase, "subject to," was referred to by Stout, C.J. in the New Zealand case of Benge & Pratt v. Guardian Assurance Company(7) when he said, "'subject to' must mean from that point of view 'swallowed up' or 'negated by'." The meanings in the various authorities in the British Commonwealth go to the other extreme in limiting their effect as did Denman, C.J., in Rex v. Churchwardens of St. James, Westminster(8) when he said, "The language is not entirely free from doubt; but, considering that a certain custom had long prevailed without question, the phrase, 'subject to the laws and statutes now in force,' must be taken as a description of the existing practice." This diversity of meaning and the need to consider the entire document are emphasised when we note in two decisions of the Privy Council one year apart the judgment of the same Law Lord, Lord Simonds, where the words, "subject to," are given the contradictory meanings of "without prejudice to" that is to say with no restriction on what is being qualified and "the words subject to are naturally words of restriction". The two cases I refer to are Smith v. London Transport Executive(9) and Akistan Apena of Iporo v. Akinwande Thomas (10). Remembering the words of Maugham, J., in In re Dunkley v. Sullivan (11) where he held that the words, "subject to the provisions contained in the will," must mean "subject to all the provision of the will which

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(7) (1915) 34 N.Z.L.R. 81, 86.
(8) 111 E.R. 1213, 1217.
(9) (1951) A.C. 555
(10) (1950) A.C. 227, 234.
(11) (1930) 1 Ch. 84, 87.

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remain operative and effective," I have come to the conclusion that the meaning which reading the Constitution as an entirety and having regard to the consideration of what is happening on the granting of a fresh Constitution, I ought to give to the words, "subject to," is following Denman, C.J. "subject to the procedural limitations of," or alternatively to follow the wording of Lord Simonds in Smith's case and to say the jurisdiction is given to be exercised" within the restrictions or limitations imposed by," and this meaning is well within the limits of the range of meanings given to the words, "subject to," by the Courts throughout the British Commonwealth; and although I deprecate - as has been done by others before me - extracting a word from its context to ascertain its meaning, having extracted it I see no reason for altering or doubting the correctness of the interpretation I have given it as a whole. My conclusion I think can be tested in another way. The Attorney-General in his submission limited the words, "existing law," as opposed to Federal and/or State law to the body of law as it existed prior to Merdeka Day unaltered. To use the words contained in paragraph 9, page 3, of his written submissions: "It is important to observe that it does not refer to a law which was in operation on Merdeka Day but to one in operation immediately before that day. That excludes any question that "existing law" in Article 144(1) means a law modified in accordance with Article 162 because of course Article 162 was not itself in operation immediately before Merdeka Day". Whilst I am not in agreement with his reasoning the wording and the definition "existing law" taken in conjunction with the use of the terms Federal and/or State law to cover or rather to describe existing law at the point of time after Merdeka would have forced me to the conclusion in accordance with the submission that the term existing law does not cover existing law amended or modified on or after Merdeka Day had it not been for the wording of Article 162 and in particular Clause (3) thereof which inclines me to the view that it was intended to take advantage of the reservation of "unless the context so requires" in Clause (2) of Article 160. In my opinion, however, that construction so far from assisting the arguments of the Attorney-General shews that the Attorney-General's suggested meaning should not be given

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to the words, "subject to". Accepting, for the sake of argument, his interpretation of existing law then if one gives to the words, "subject to," the negating effect to the remainder of Article 144 that he suggests then there never can be a Police Service Commission operating as provided by the Constitution because on his submission the Commissioner of Police would be entitled to say at all times that he had the power under the law as it existed prior to Merdeka and that the Commission whose duties were subject to existing law could never obtain the right to exercise any of its duties. I am forced to decline to accept his interpretation of the words, "subject to," as it would mean there could never be an effective Police Service Commission with jurisdiction extending to all members of the Police Service. On the other hand we note that if the words, "subject to," are given in the light of the whole Constitution the meaning that I have put forward then without interfering with the definition of existing law as opposed to Federal or State law one can still in my opinion include amendments, variations and modifications to existing law after Merdeka and still constitutionally reach the impossible situation if one gives to the words, "subject to," the interpretation claimed by the Attorney-General. In this connection one should consider the fact that it is not under the Constitution every piece of legislation or Parliament which can amend the Constitution. And, again, it is not, with respect, His Majesty the Yang di-Pertuan Agong or the Courts of this country that can amend the Constitution. When one considers that then I think one is placed in the position of saying that if the meaning for the words, "subject to," claimed by the Attorney-General is the correct one the action or rather the lack of action by His Majesty or by a bare majority of Parliament could continue the powers of the Commissioner of Police to the exclusion of the body which the Constitution has said shall have jurisdiction over all members of the service. I have not overlooked that part of the Attorney-General's submission in which he endeavours to deal with this aspect when at page 4, paragraph 14, he says that the Police Service Commission would be left with the powers of appointment and discipline in respect of gazetted police officers. For myself

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I am unable to accept this submission. Section 8(1) of the Police Ordinance No. 14 of 1952 provides that gazetted police officers shall be appointed in the same manner as other public officers of corresponding status in the service of the Government of the Federation and shall be subject to the same disciplinary provisions. The Attorney-General suggests that the application of the Constitution to that section will mean that they come directly under the power of the Police Service Commission. With that submission I am unable to agree. If his interpretation of the words, "subject to," be correct then gazetted police officers are appointed by the pre-Merdeka tribunal of the Civil Service Appointments and Promotions Board; or if the wider meaning be given to the term, "existing law," then they will come under the jurisdiction of the Public Services Commission under Article 139. There is nothing in the Constitution which applied to Section 8(1) as would make necessary any modification of section 8(1) although it would be open to the Yang di-Pertuan Agong under his powers of expediency to have modified Section 8(1) to provide for the Police Service Commission having the power as at the relevant dates. As far as we are concerned there was no modification of Section 8(1) of the Police Ordinance. I doubt myself whether this method of interpretation is permissible but even if it is permissible then it is clear that given the interpretation put forward by the Attorney-General the Police Service Commission will not by virtue of the Constitution have any powers to deal with gazetted officers because the existing law has given the jurisdiction to another constitutional body. But in any case the words of Article 140(1) are clear, the jurisdiction extends to all (not some) of the members of the police service as it was then called. Although I would not carry it to any great extent some support for the interpretation I

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have given is provided by the existence of
 Clauses 3, 4 and 6 of Article 144 of the Con-
 stitution. They certainly establish the
 fallacy in the statement by the Attorney-
 General that the Police Service Commission
 and other Commissions were not in exist-
 ence legally on Merdeka Day and also the
 necessity for their insertion does support
 the statement that the bodies or tribunals
 given a jurisdiction by the Constitution are
 not limited in their jurisdiction by exist-
 ing law. Being of the opinion that the
 method of interpretation I referred to ear-
 lier is the correct one to apply to a consti-
 tution I have asked myself the same ques-
 tions and find myself forced to the conclusion
 that the words, "subject to existing law,"
 mean no more than that the jurisdiction is
 given to the Police Service Commission as and
 when appointed but that it has to exercise
 that jurisdiction or perform its duties with-
 in inter alia the limits of the laws existing
 at Merdeka Day. To put it another way to
 emphasize the conclusion to which I have come
 as to what was meant by Lord Simonds in Smith
v. London Transport Executive (supra) - the
 duty is to act within the limitations or re-
 strictions imposed by existing law or the Con-
 stitution - I find nothing in the words of
 Lord Simonds in Smith's case especially when
 considered in the light of his interpretation
 of similar words one year earlier in Akisatan
Apena's case which forces one to state that
 the restriction on the duty is of necessity
 one of jurisdiction but may be only one of
 procedure as in the case decided by Denman,
 C.J. earlier. The correctness of this in-
 terpretation is in my opinion emphasized when
 one considers the application of Article 176
 to the facts of this particular case and what
 had to be decided, namely, - did Carbonell
 as Commissioner of Police have power to dis-
 miss Inspector Kanda? To decide this
 involves the answering of two questions -

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1. What were the rights of Inspector Kanda? and
2. What were the powers of the Commissioner of Police Carbonell over him?

To deal with the first question. The unchallenged and undenied statement of the Respondent that on 1.6.1953 he was confirmed in the rank of Police Inspector establishes him as a pre-Merdeka officer. His powers functions and most important his rights must be founded on Article 176. I pause here to draw attention to the difference in wording between Articles 174, 175 and 176, and to point out that although no restriction on the existing law by virtue of the Constitution is imposed by Article 162 a restriction in the operation of that existing law is imported by Article 176 as regards the powers, functions (and most important) the rights of Inspector Kanda. I should perhaps add that a diligent search of the Government Gazettes has not disclosed the fresh appointment after Merdeka Day of Respondent or Carbonell. Even applying the interpretation submitted by the Attorney-General cannot the Respondent justifiably say, "by virtue of Articles 176 and 141 I am under the sole jurisdiction of the Commission since concurrent jurisdictions are not possible?". I think he can. I would, however, point out that if the Attorney-General's construction is applied to Article 176 the words "and subject to existing law" are meaningless because they already exist in the last lines of Article 176.

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To come now to the question of the powers of Carbonell, the record gives me no assistance as in the case of Kanda. If I am permitted, which I doubt, to have reference to the Government Gazettes, then he is in the

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same position as Kanda in which case if you use the interpretation of the Attorney-General he has by virtue of Article 140 lost his power unless you can have concurrent jurisdictions because his power under Article 176 is subject to the restriction imposed by Article 140. In any case, it is unanswerable that Carbonell's powers must be dependent on whether his appointment is pre-Merdeka or post-Merdeka by His Majesty. If it be the latter, it seems to me the interpretation of the learned Attorney-General would leave the Court in the dilemma of having to decide the answer to the question of priority as between chicken and the egg, or as between the clear constitutional rights of Kanda and according to the learned Attorney-General the clear power of the Commissioner of Police Carbonell. I cannot conceive that the learned draftsmen of the Constitution intended this and it seems to me I am forced to reject the interpretation put forward by the learned Attorney-General and to seek another interpretation. The interpretation I have given of the relevant phrase besides giving effect to all the words used in Article 176 solves this dilemma. I have not overlooked the fact that if my interpretation be correct then it would mean that constitutionally the Police Service Commission in this particular case would have to deal with every minor disciplinary offence committed by any member of the police force. That, of course, must be admitted but in my opinion it is not (as submitted by Attorney-General) a factor which affects the otherwise clear meaning of the Constitution read in toto. This is made even clearer when one notes the power of delegation given to all commissions in the Constitution. It clearly establishes, to my mind, that the persons responsible for the Constitution fore-saw this particular difficulty and inserted the powers to delegate to cover the

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position. In fact, one could go further since it is the Constitution which is being interpreted and say that the Constitution clearly intends that there should be a delegation. For those reasons, in my opinion, Rigby, J., was right when he held that the Constitution had given the power to appoint and to dismiss police officers to the Police Service Commission to the exclusion of the prior existing powers of the Commissioner of Police. It cannot, in my opinion, be overlooked that the submission of the learned Attorney-General gives no meaning to the words, "and of this Constitution." The point was not dealt with by him but it seems to me that the only argument open to him would be to submit that in the event of conflict when interpreting Article 144 the existing law prevailed because of the actual wording but this argument would be answered by pointing out that the converse must be the case in interpreting Article 176 and the dilemma I have mentioned would then arise. If to avoid the dilemma one gives to the word "and" the meaning of "or" then in my opinion you are forced back to the basic principle that a written constitution is fundamental.

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In case I am wrong in this I have to consider whether as is relied upon by Rigby, J., Clause 6 Article 162 had to be applied. The answer to this question depends upon the meaning to be given to the word, "necessary," bearing in mind the distinction to which the Attorney-General drew attention between the powers of the Yang di-Pertuan Agong to modify and the powers of the Court, namely, that His Majesty was entitled to modify for reasons of expediency. I have reached the conclusion that the words, "necessary", (although I do not attempt to provide a full definition of the word) must include what is essentially required to give effect to the Constitution. In my opinion even if I be wrong in my interpretation of the Constitution as set out above, the use of Clause 6

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Article 162 by the Courts has become necessary to give effect to the permanent provisions of the Constitution and, in particular, Article 140, unless I read for the words, "all members of the police service," the words, "gazetted police officers only," and this with respect to the other members of the Court I find myself unable to do. In my opinion it is the duty of the Courts to make the necessary modification. I would therefore agree with Rigby, J., that if the construction previously given is at fault, the Court is under a duty to bring into operation Clause 6 of Article 162. It was mentioned by the Attorney-General in the course of his argument that the modification under Clause 4 of Article 162 by His Majesty in respect of any other provisions of an existing law would preclude the exercise by the Court of its power under Clause 6. The Attorney-General beyond making this submission did not develop the argument, and I am not certain how far he wished that submission to be taken. In my opinion, however, having regard to the wideness of His Majesty's power and the definition of the term, "law," this argument is fallacious. In any case it is purely academic because the time for modification by His Majesty has now expired at the most it could only be taken as far as a statement that the Courts would have to consider the Constitution as modified by His Majesty at the time of consideration. The Attorney-General then proceeded to deal with the remitting by the trial judge of the proceedings to the Registrar to take an account and for necessary consequential orders following on that account. It was the submission of the Attorney-General that on the law of the Federation as set out in the Enactments and cases to which he makes reference in his written submissions a judgment cannot be entered against the Government of the Federation. How far those pre-Merdeka judgments are affected by the new Constitution is not clear to me but I find it

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unnecessary in the light of the undertaking twice repeated by the Attorney General to make a decision thereon. The reason for this will be clear when reference is made to the actual order which I would make on this appeal.

For myself I would grant the appeal to the extent of deleting from the declaration the words, "and still is a member of the force," and substituting the words, "and was at the date of filing of the suit a member of the force."

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As regards the remitting to the Registrar, I would order a stay of that part of the order pending a further order of this Court.

In view of the judgments of the majority of the Court I would content myself on the question of costs with saying I see no reason why the successful party should not get his or its costs.

I note that I have not dealt with the so-called cross-appeal. I have not done so because when the question was raised during the hearing by the learned Chief Justice - I am not certain whether counsel for the Respondent withdrew or abandoned it - but if it still remains extent, in my opinion, it is not a cross-appeal in that it is not sought on behalf of the Respondent to set aside the order or the judgment in the Court below or any part thereof. It is therefore not a proper cross-appeal. It is no more, in my opinion, than Respondent's reasons additional to the judgment of Rigby, J., to support the actual judgment in the Court below.

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Sgd: M.G.Neal
Judge
Federation of Malaya

14th November, 1960.

TRUE COPY

Sd/-
Secretary to Judge
Ipoh.
15/12/60.

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IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No: 30 of 1960

(Penang High Court Civil Suit No.232/59)

The Government of the
Federation of Malaya ... Appellant

v.

B. Surinder Singh Kanda ... Respondent

Cor: Thomson, C.J.
Hill, J.A.
Neal, J.

JUDGMENT OF THOMSON, C.J.

This appeal from a decision of Rigby, J., raises a question of some importance as to the interpretation of certain provisions of the Constitution.

The Respondent was at all material times, and indeed claims still to be, an Inspector in what is now the Royal Federation of Malaya Police. He was first appointed on probation in 1951 and permanently appointed to the rank of Inspector on 1st June, 1953. On 7th July, 1958, he was dismissed from the Force by the Commissioner of Police and it is from that dismissal that the present proceedings arise.

Up to a point the circumstances leading up to Inspector Kanda's dismissal are not very seriously in dispute.

Some time in April, 1957, the Police in Penang obtained information, which clearly had some truth in it, to the effect that forged tickets in the Social and Welfare Lottery were in circulation. This was investigated and from

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a very early stage the Respondent, Inspector Kanda, was either in charge of or otherwise personally engaged in the investigation. Eventually two men, Loh and Ang, were arrested and were committed for trial at the Penang Assize for possession of forged lottery tickets in contravention of Section 474 of the Penal Code and abetment of that offence.

The two accused were tried before Rigby, J., and a jury and were found not guilty and in the course of the trial it became probable that two police informers and at least two police officers had committed perjury. One of these police officers indeed admitted in Court that he had given false evidence and when subsequently prosecuted in the Magistrate's Court pleaded guilty to a charge of perjury for which he received a discharge without a conviction being recorded, in spite of which he is still a member of the Police Force. Another police witness was prosecuted for perjury but the prosecution was withdrawn apparently because it was thought it must fail on technical grounds. No proceedings were taken against the two police informers.

As a result of these events the Commissioner of Police set up a Board of Inquiry to enquire into the circumstances of the case. This Board consisted of three senior Police Officers and on a number of days during the months of December, 1957 and January, 1958, took unsworn statements from a number of police witnesses including the present Respondent and the two police informers who had given evidence at the forgery trial.

This Board produced a lengthy report dealing in detail with the affairs as a whole and the parts played in it by a number of individual police officers. It was accepted, and indeed at that stage the point was beyond controversy, that perjury had been committed at the forgery trial, but it was thought that the Police officers who had conducted the prosecution case at the preliminary enquiry and supplied the evidence to prosecuting counsel at the Assizes had done so in good faith and believing the evidence to be true. As regards

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Inspector Kanda, however, there was evidence which, if it was true, showed that he knew certain portions of the evidence proposed to be given at the forgery trial to be untrue, that he had encouraged the making of untrue statements and that he had kept to himself the knowledge that some of these statements were untrue. The Board described him as the "villian of the piece". They expressed the view that he had encouraged certain witnesses to give false evidence so as to "simplify the case and to cut short the evidence". As regards certain other evidence they expressed the view that his motive was "dishonestly to strengthen the case against both accused in order to ensure a conviction in Court". They concluded :-

"The Board were forced to the conclusion that Inspt. KANDA is a very ambitious and a thoroughly unscrupulous officer who is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods."

In consequence of this report it was decided to take disciplinary proceedings against Inspector Kanda and on 12th March, 1958, Mr. Strathairn, who had just been transferred to Penang as Chief Police Officer and who was junior to one of the members of the Board of Inquiry but senior to the other two members, was instructed to act as the Adjudicating Officer in such proceedings. He was furnished with a copy of the report of the Board of Inquiry and with the statements made by witnesses before that Board. He was also furnished with charges which after some variation were the charges which Inspector Kanda was later called upon to answer.

Although they gave rise to much argument at one stage of the proceedings, I do not think it is necessary to discuss these charges in detail here. Apart from a minor charge of disobedience to a lawful command by failing to subpoena a witness, they were to the effect that it was the duty of Inspector Kanda to prepare the Police Investigation Papers on which the prosecution case at the forgery trial would be based and that in

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doing so on each of four specified material points he dealt with the evidence in a way that could be regarded as either failing to disclose evidence in his possession, which is an offence against discipline by reason of regulation 2(a) (44) of the Police Regulations, or as submitting evidence which he knew to be false which amounted to conduct to the prejudice of good order and discipline in contravention of regulation 2(a) (65) of the Police Regulations. 10

These charges were communicated to Inspector Kanda and at a later stage the statements made by the witnesses before the Board of Inquiry were also communicated to him but the report of that Board which had been communicated to Mr. Strathairn was never at any material time communicated to him.

In due course Inspector Kanda appeared before Mr. Strathairn at a Police Orderly Room and in the event after taking evidence Mr. Strathairn found that the charges made against him were proved. In respect of the minor charge of disobedience Mr. Strathairn reprimanded him but in respect of the other charges he recommended that he be dismissed from the Police. There has never been any suggestion that these proceedings were not substantially in accordance with the provisions of the Police Regulations. 20

I do not think that what subsequently happened calls for very detailed examination. In the event Inspector Kanda was dismissed by a letter dated 7th July, 1958, and after he had unsuccessfully exhausted his departmental rights of appeal he commenced the present proceedings on 1st October, 1959. 30

In these proceedings he asked for a declaration that his purported dismissal on 7th July, 1958, "was void, inoperative and of no effect, and that he is still a member of the said Force" and for various consequential reliefs. 40

The grounds on which Inspector Kanda claimed his purported dismissal was "void, inoperative and of no effect" were, first, that it had been effected by an authority subordinate

to that which at the time of the dismissal had power to appoint a member of the Police Force of equal rank and that this was contrary to Article 135(1) of the Constitution, and second, that it was effected without his being given a reasonable opportunity of being heard and that this was contrary to Article 135(2) of the Constitution and to natural justice.

10 The case was tried by Rigby, J., who dealt with it in a lengthy and wholly admirable judgment. He took the view that on a proper construction of Article 144(1) as read with Article 135(1) of the Constitution at the material time, which was the time of Inspector Kanda's dismissal, the power to appoint, and consequently the power to dismiss, officers of his rank was vested in the Police Service Commission and that the Commissioner of Police was an authority subordinate to the Police Service Commission and so by reason of Article 135 (1) of the Constitution had no power to dismiss him.

20 That was enough to conclude the case in favour of Inspector Kanda, but His Lordship also dealt with the other ground on which Inspector Kanda's claim was based. That was that even if the Commissioner of Police had the power to dismiss him, his dismissal as actually effected was contrary to natural justice and in breach of the Constitution in that he was not afforded a reasonable opportunity of being heard before an order of dismissal against him had been made. On this point His Lordship, after a very detailed examination of the facts, came to the conclusion that there had been a failure to afford Inspector Kanda a reasonable opportunity of being heard before he was dismissed. It is important, however, to observe that His Lordship based this conclusion on two things and two things only. One was that at 30 the original disciplinary proceedings Mr. Stat-hairn was in possession of a copy of the findings of the Board of Inquiry into the circumstances of the abortive forgery trial. The other was that Inspector Kanda had not been supplied with a copy of these findings. His Lordship concluded :-

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" In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the Plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the Plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal."

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Having arrived at these results His Lordship gave judgment in favour of Inspector Kanda for a declaration that his purported dismissal from the Police was void, inoperative and of no effect and that he was still a member of the Police, for payment to him of his emoluments from the date of his dismissal on 7th July, 1958, the amount of these emoluments to be found on an inquiry, and for costs.

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Against that decision the Government has now appealed, and of course such an appeal involves an attack on both of the groups of conclusions which led Rigby J., to his ultimate result. There is also what is called a "Cross-appeal" by Inspector Kanda but I propose to disregard it beyond saying it should be formally dismissed because it does not ask that the decision of the High Court should be varied in any way but merely controverts a number of observations made by the trial Judge in the course of his judgment.

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In the first place I propose to deal with the constitutional question of whether or not the Commissioner of Police had power to dismiss Inspector Kanda. Before doing so, however, it should be made clear that the constitution which came into force on Merdeka Day, that is 31st August, 1957, was amended by Act No:10 of 1960 with effect from 31st May, 1960. The material date in the present case is 7th July, 1958, the date of the purported dismissal of Inspector Kanda, and what we are concerned with, therefore, is the provisions of the Constitution as

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they stood subsequent to its coming into existence but prior to its amendment in 1960.

10 The law relating to what is now known as the Royal Federation of Malaya Police is to be found in the Police Ordinance, 1952 (No: 14 of 1952). Putting aside such functionaries as women police, extra constables and watch constables, the Ordinance divides members of the Force into four classes: gazetted police officers, superior police officers (which includes inspectors), subordinate police officers and constables.

20 As regards gazetted police officers, section 3 provides that such officers shall be appointed "in the same manner as other public officers of corresponding status in the service of the Government of the Federation, and shall be subject to the same disciplinary provisions". The Ordinance is silent as regards the discharge of such officers so the question of their discharge is governed by Section 29 of the Interpretation and General Clauses Ordinance by which, in brief, a power to appoint is to be construed as including a power to dismiss.

30 As regards superior police officers, subordinate police officers and constables, section 9 provides that such officers may be appointed by the Commissioner and section 10 provides that their appointments shall be for such period as may be prescribed by Police Regulations.

40 A general power of discharge is contained in section 19 which provides that a superior police officer or subordinate police officer may be discharged by the Commissioner, and a constable may be discharged by the Commissioner or a Commanding Officer, at any time if unlikely to become an efficient police officer or physically or mentally unfit or on reorganisation or reduction of establishment. That general power, however, is subject to the proviso that except in certain specified cases no police officer is to be discharged under the section without the prior approval by an authority who prior to 31st August, 1957, was the High Commissioner in the case of superior police officers and the Chief

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Secretary in the case of subordinate police officers or constables and who since that date has been His Majesty in the case of superior police officers and in the case of subordinate police officers first the Minister of Defence and then, since 24th August, 1959, the Police Service Commission (see L.N.(N.S.) 1/57; L.N.(N.S.) 30/57; L.N. 294/59).

Apart from the provisions of section 19, section 45 provides that any superior police officer, subordinate police officer or constable who is found guilty by an officer authorised in that behalf of any offence against discipline shall be liable to such punishment in accordance with the provisions of the First Schedule to the Ordinance. That Schedule sets out a range of punishments from dismissal to punishment drill and provides inter alia that dismissal can only be imposed as a punishment on a superior police officer by the Commissioner of Police himself.

By section 47 any conviction and punishment imposed under section 45 is subject to appeal as prescribed by the Police Regulations. Originally in the case of a superior police officer who was dismissed that appeal was to the Chief Secretary, then from 31st August, 1957, until 23rd August, 1959, it was to the Minister charged with the responsibility for the Police, who was at that time the Minister for Defence, and since 24th August, 1959, it has been to the Police Service Commission (see L.N. (N.S.) 1/57; L.N. (N.S.) 30/57 and L.N. 294/59).

It was under the provisions of section 45 that the Commissioner purported to dismiss Inspector Kanda and what is in question here is whether on 7th July, 1958, the date of the dismissal, the Commissioner still possessed the power to dismiss under that section.

That question has to be considered in the light of the relevant provisions of the Constitution relating to the Public Services.

Article 132 sets out what are the public services and these include the "general public service of the Federation" and what, prior to

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the 1960 amendments, was called the "police service" and is now called the "police force". The Article goes on to provide that the qualifications for appointment and the conditions of service of persons in these services may be regulated by federal law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong. Since the 1960 amendments the Article has provided (though it did not do so originally) that, except as expressly provided by the Constitution, every person in any of the services, except State services, holds office during the pleasure of His Majesty.

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Then comes Article 135 which is of vital importance in the present case. The relevant portions read as follows :-

" 135. (1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard. "

That Article applies in terms to the "police service" which is the service mentioned in paragraph (d) of Article 132, and in the absence of any specific limiting words I think it clearly applies to all members of the police service, particularly when regard is had to the history of the corresponding Article of the Indian Constitution to which it corresponds, which is Article 311.

Similar provisions to those of sub-article 135(1) were to be found in section 34 (1) of the Government of India Act, 1919 (section 96B of the 1929 Reprint) but when that section was in effect re-enacted by section 240 (2) of the Government of India Act, 1935, it was provided by section 243 of that Act that notwithstanding the provisions of section 240

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the conditions of service of the subordinate ranks of the various police forces in India should be such as might be determined by the various Indian Acts relating to these forces and this was held in the case of North-West Frontier Province v. Suraj Narain Anand⁽¹⁾ to exclude the subordinate ranks of the Police from the provisions of section 240(2) on the ground that liability to dismissal was a condition of service. When the Constitution of India came to be enacted section 240(2) of the 1935 Act was in effect re-enacted in Article 311(1) but section 243 was not re-enacted with the result that, as has been recognised by the Courts in India, subordinate members of the Police Forces are now entitled to the protection of Article 311(1) (see Suresh v. Himangshu).⁽²⁾ Again provisions similar to those of the second sub-article of our Article 135 are to be found in section 240(3) of the Government of India Act, 1935, but no class of persons were excluded from the operation of that section and it became Article 311(2) of the Indian Constitution.

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To return to our own Constitution, Articles 138 (now repealed), 139, 140 (now amended) and 141 set up Commissions to have "jurisdiction" over the members of each particular Service. In particular, Article 140 provides for a Police Service Commission whose "jurisdiction" was prior to 1960 to extend to "all persons who are members of the Police service".

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The functions of these Commissions (including the Police Commission) are set out in Article 144(1) which reads as follows:-

"Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

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(1) L.R. LXXV I.A. 343.
(2) (1951) C. W. N. 605.

Although the word "power" does not occur in that Article it is clear from the use of the words "duty" and "jurisdiction" that, read with Articles 138, 139, 140 and 141 it would in the absence of any limiting words give the various Commissions set up by these Articles power to appoint members of the services over which they have jurisdiction. But there are limiting words. The Article commences with the words "subject to the provisions of any existing law and to the provisions of this Constitution". In my view, as a matter of construction these words limit the powers of the Commission and do not merely mean that these powers are to be exercised in accordance with any procedural requirements of the existing laws or of the Constitution. As was said by Lord Simonds in the case of Smith v. London Transport Executive (3) the words "are apt to enact that the powers thereafter given are subject to restrictions or limitations to be found elsewhere". Later (at p. 569) His Lordship said :-

" The words 'subject to the provisions of this Act' are naturally words of restriction. They assume an authority immediately given and give a warning that elsewhere a limitation upon that authority will be found. "

Here, then, the limitations upon the powers of the Commissions in general and of the Police Service Commission in particular are to be looked for in two places, in the Constitution itself and in the "existing laws".

As far as the Constitution is concerned there is no difficulty. Though it is no doubt true, at any rate in a popular sense, that the services enumerated in Article 132 include all the functionaries of Government who could reasonably be regarded as public servants, it is clear, from the provisions of the Constitution itself, that all those functionaries are not to be appointed by one or other of the Commissions. In addition to the special provisions as to the appointment of Judges and the Auditor-General

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and certain other functionaries, there is Article 144(3) which provides that His Majesty may designate certain senior posts as special posts and that when he does so appointments to such posts are not to be made by the appropriate Commission but are to be made by His Majesty himself on the recommendation of that Commission and Article 144(4) which contains similar provisions as to similar posts in the services of the States.

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As regards the "existing laws", these are defined by Article 160 as any laws in force in the Federation, or any part thereof, immediately before 31st August, 1957, and they are continued in force after that date by Article 162.

Here two things must be clearly borne in mind in limine.

The first is that the Constitution is a Constitution; that is to say, it does not purport to be a complete and exhaustive code of law dealing with every activity of the State and with every right and duty of the citizen. What it is, and what it purports to be, is an instrument setting out the organisation of the State, setting out the powers and relationships to each other of the various organs of the State and distributing among them the executive, the judicial and, what we are concerned with here, the legislative power.

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The second point to be observed is that immediately before the coming into existence of the Constitution on Merdeka Day, 1957, the geographical territory to which that Constitution was to be applied was not a hitherto unoccupied territory on the moon, nor was it as the Garden of Eden before the Fall. It was a territory which was in existence and had a political identity under a different Constitution and which possessed a great body of law enacted by a variety of legislatures governing every aspect of the activities of the citizens. There was a body of criminal law, there was a body of civil law, there was a body of law affecting status and so forth and so forth.

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The new Constitution made no attempt to

10 deal in detail with the subject matter of that pre-existing body of law. As regards the future it vested the legislative power of the new State in Parliament as regards certain matters and in the legislative bodies of the constituent States as regards other matters. Clearly, however, these newly created legislative organs could not within any reasonable period of time provide the new State with the complete apparatus of law which is considered necessary in a modern State. If chaos were to be avoided the only practical step was to continue in existence the body of law that already existed and to make it clear that it spoke with the voice of authority as clearly as did the laws to be enacted by the newly legislative bodies.

This was sought to be done by Article 162 which is to be read in the light of Article 4(1) which reads as follows:-

20 " This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void. "

30 Article 162 provides that the "existing laws", that is the laws in operation immediately before 31st August, 1957, shall continue in force after that date subject to any modifications made to them under the Article itself and subject to any amendments made to them by federal of State law, that is to say, Acts of Parliament or laws made by the legislature of any State. From that it follows that any reference to the existing laws in any other Article of the Constitution must be held to be a reference to such existing law as it reads at whatever time may be material to the purpose for which such reference is made, that is to say, as modified or amended, if at all, as at the time of reference. That is, I think, clear from section 14 of the Interpretation and General Clauses Ordinance, 1948, which is in terms applied to the interpretation of the Constitution by Article 40 160.

Apart from amendment by legislatures constituted and recognised by the Constitution,

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Article 162 provides for modification of the existing laws in two ways.

The first is that His Majesty may within two years after 31st August, 1957, by order make such modifications in any existing law as appear to him necessary or expedient to bring the provisions of that law "into accord with the provisions of this Constitution".

The second is that where no modification order has been made by His Majesty any Court applying the provisions of an existing law at any time "may" do so "with such modifications as may be necessary to bring it into accord with the provisions of this Constitution". In both cases "modification" includes amendment, adaptation and repeal.

The Police Ordinance, 1952, was in force on 30th August, 1957, and thus is one of the "existing laws" within the meaning of Article 162. Since Merdeka Day its provisions for the appointment and dismissal of superior police officers have not been amended by Parliament. Neither have they been modified by His Majesty under Article 162, and indeed by reason of effluxion of time they cannot now be so modified. The only question, then, and to my mind it goes to the root of the present appeal, is whether this Court is required to modify them in any way in accordance with its power under Article 162.

One object of Article 162(6), the sub-article which gives the Court power to modify, is clearly to avoid questions of implied repeal arising. If no such provision existed it might well be, in spite of Article 4, that some particular provision of an existing law inconsistent with some general provision of the Constitution would be treated as having been pro tanto repealed and there would thus be left a legislative lacuna. In such a case the Court has the power to modify the provision in question rather than treat it as repealed by implication and in my view, in spite of the use of the word "may", the Court is under a duty to exercise that power in relation to any provision of the existing laws which would otherwise be treated as repealed by implication and to modify, that is to say amend,

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it so as to bring it into accord with the provisions of the Constitution.

But, is the present case a case where that power should be exercised?

10 The Constitution itself if we were to exclude all references to existing law would provide that superior police officers (and indeed all police officers) should be appointed by the Police Service Commission. Article 135(1) says that no Police Officer can be dismissed by any authority subordinate to the authority which appointed him and in the present case the curious admission has been made on the pleadings that the Commissioner of Police is an authority subordinate to the Police Service Commission. Strange as it may appear to be I think we must accept that admission (which to me appears contrary to all reality) for the purpose of the present case and on it, considered in relation to Article 135(1), the Commissioner of Police would after 31st August, 1957, have no power to dismiss a superior police officer (or indeed any police officer) and the relevant provisions of the Police Ordinance which give him that power would therefore ex facie be inconsistent with the provisions of the Constitution and call for modification by the Court in accordance with Article 162(6).

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30 That argument, however, overlooks the opening words of Article 144(1), "subject to the provisions of any existing law and to the provisions of this Constitution". These words clearly envisage that the Commission's powers are to be limited by provisions of the existing law which are not the same as any provisions of the Constitution, for otherwise there would be no need to refer to the existing laws. Moreover, if the relevant provisions of the existing laws are to be modified by the Court under Article 162(6) the modifications thus made could only be such as to make the existing law identical with the corresponding provisions of the Constitution. The effect of this, however, would again be to make the reference to the provisions of the existing law meaningless and a piece of surplusage. It is axiomatic that all the words of a statute are to be given some meaning, if possible. Here

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that principle requires that the reference to the existing laws in Article 144 be read as a reference to these laws subject to any amendment made to them by the legislature and not as subject to any modification to be made by the Court under Article 162.

We are not concerned here with the powers of His Majesty under that Article which have never been exercised in this connection and are now spent, but so far as the powers of the Court are concerned, these should only be exercised if it is necessary to exercise them and here it is not necessary to do so because the Article itself envisages the possibility of the existing law differing from the provisions of the Constitution.

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I am thus led to the view that the Commissioner of Police after 31st August, 1957, still had the power to appoint superior police officers and therefore there was nothing in Article 135(1) which affected his power under section 45 of the Police Ordinance to dismiss such officers in general and Inspector Kanda in particular.

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Although the argument is not in itself conclusive, I find some support for the views I have expressed in the wording of Article 135(1) itself to the effect that no member of the services mentioned in Article 132 (other than the armed forces) shall be dismissed by an authority subordinate to that which has power to appoint a member of that service of equal rank. The wording of that Article clearly contemplates that within any of the specified services persons of different ranks may be appointed by different authorities. If in every case only the appropriate Commission had the power to make appointments then one would have expected Article 135(1) to read that no member of any service should be dismissed except by the Commission having jurisdiction over that service.

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I am not, of course, overlooking the extraordinary fact which was disclosed in evidence at the trial of the present case that since 31st August, 1957, superior police officers have in fact been appointed by the Police service

Commission and not by the Commissioner of Police. Unless the Government can persuade some Court in the future to take the view that the Police Service Commission has done so by reason of some legally permissible delegation of power to it by the Commissioner of Police, the conclusions at which I have arrived, and at which I hasten to add we have been invited to arrive, would seem to support the corollary that none of these functionaries appointed by the Police Service Commission have been properly appointed and this may cast some doubt on their legal capacity to exercise the powers and enjoy the protection accorded by law to Police Officers. That, however, is beside the point. I am bound to state the law as I believe it to be without regard to any unfortunate consequences that may follow.

Before departing from this part of the case there are two observations I would wish to make.

The first is that I have not been unmindful of the Attorney-General's argument based on the case of R. Venkato Rao v. Secretary of State for India in Council (4) that apart from the provisions of the Constitution Government servants hold their offices during the pleasure of the Paramount Ruler and therefore their services may be terminated at any time. It is very likely that since the 1960 amendments there is such a power in the Paramount Ruler although it is not altogether clear whether there was such a power prior to 1960. The question, however, does not arise here for there is no question of Inspector Kanda having his services terminated by the exercise of any such power or purported power. What happened here, and it is the only thing that happened, is that he was dismissed for misconduct by the Commissioner of Police under the powers vested in him by the Police Ordinance and there has never been any suggestion that his services were in fact terminated by anybody else or in any other way.

In the second place I would observe that at the material date, which was between 31st August, 1957, and 24th August, 1959, Inspector

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(4) (1937) A.C. 248.

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Kanda's right of appeal was to the Minister of Defence but the Minister in fact referred it to the Police Service Commission for consideration and the Commission considered it and advised its dismissal although it is clear from the correspondence that the Minister also applied his own mind to it before accepting the Commission's advice.

Having thus arrived at the result that on the material date the Commissioner of Police had power to dismiss Inspector Kanda the question then arises as to whether Rigby, J., was right in holding that the purported exercise of that power was bad by reason of a failure to comply with the requirement of Article 135(2) of the Constitution that he should not be dismissed "without being given a reasonable opportunity of being heard".

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I have had the benefit of reading the judgments which are about to be delivered by Hill, J.A. and Neal, J., and I am in agreement with what they have to say on this point. In the circumstances I propose to say only a few words of my own.

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It has never been suggested that Inspector Kanda has not had an opportunity of being heard. Indeed since the very commencement of the disciplinary proceedings against him the voices of himself and his lawyers have been seldom silent. What is said is that he has not been given a "reasonable" opportunity of being heard. This allegation is based on a number of matters, some of them substantial and some of them so trivial that they can safely be dealt with somewhat summarily.

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As has been pointed out, at the disciplinary proceedings before Mr. Strathairn Inspector Kanda was faced with two sets of alternative charges, and it was alleged by Inspector Kanda that at the conclusion of the proceedings he was not informed on which of these two sets of charges the Adjudicating Officer had found the case against him to be made out. This allegation is probably based not on any recollection of what actually took place, but on the rather carelessly worded letter of dismissal

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addressed to him on 7th July, 1958, which if read literally suggested that he had been found guilty on both sets of charges. The evidence, however, was to the effect that at the termination of the disciplinary proceedings he was verbally informed that it was on the first set of charges that he had been convicted and this was accepted as evidence of truth by the trial Judge. In any event it is difficult to see how Inspector Kanda could have been prejudiced in any way event if there had been a failure to inform him on which of the two sets of charges he was found guilty for as has been pointed out each set of charges was based on precisely the same facts and the only difference between them was that in the one set the facts were treated as suppressio veri while in the other they were treated as suggestio falsi.

Then it was said that after he had been informed that the charges against him were found proved Inspector Kanda was entitled to a second hearing by the Commissioner of Police in person to show cause why the punishment of dismissal should not in the circumstances be inflicted upon him.

That argument is based on the case of The High Commissioner for India and Anor. v. I.M. Lall (5) where in effect it was held that a member of the Indian Civil Service against whom disciplinary charges were made was entitled to be heard not only before the officer enquiring into these charges but also when the report of such officer was brought to the Public Services Commission with a view to his dismissal. That case, however, turned on the nature of the arrangement for disciplinary proceedings against Civil servants in India which differ from these here and on the wording of section 240(3) of the Government of India Act, 1935 (now Article 311(1) of the Indian constitution) which differs from the wording of Article 135 (2) of our Constitution. In India an officer is not to be dismissed without being given a reasonable opportunity "of showing cause against the action proposed to be taken in regard to him", whereas with us the requirements is simply that he shall be "given a reasonable opportunity of being heard". In this connection,

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too, it must be borne in mind that here a Police Officer dealt with by the Commissioner of Police has a right of appeal which was in fact exercised by Inspector Kanda whereas in India there would appear to be no appeal from a decision of the Public Service Commission.

Finally, and this was the high water mark of Inspector Kanda's case and was indeed the ground on which he succeeded in the High Court, it was said that whereas Mr. Strathairn, the Adjudicating Officer in the disciplinary proceedings, was furnished with a copy of the report of the Board of Inquiry which enquired into the forged lottery tickets trial a copy of this report was not supplied to Inspector Kanda himself, although he had asked for it.

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Now is it important to observe that this was looked at in entirely different ways by Inspector Kanda and by Rigby, J.

Inspector Kanda's attitude was that this report was something he should have had prior to the disciplinary proceedings in order fully to appreciate the case against him and the case which he had to meet. In my view this complaint is entirely without substance when viewed in the light of all the surrounding circumstances. The charges against Inspector Kanda did not come to him as a bolt out of the blue. To begin with, he was intimately acquainted with the Police investigation of the forged lottery tickets case for at all material times he was in charge of that investigation. It is difficult to suppose that he did not know what happened at the subsequent trial of that case. He knew, too, of the Board of Inquiry being set up. He was furnished with full statements made by the witnesses who gave evidence before that Board although there is some controversy as to whether he had access at that time, although he must have had it earlier, to the investigation diaries of two of the detective officers concerned. Finally he was given a copy of the charges against him which resulted from the Board's enquiries. He is not mentally defective nor is he entirely innocent of any knowledge of the workings of the Police organisation. These things being so, it is impossible even to suppose that

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he was not aware and fully aware of the conclusions regarding himself at which the Board of Inquiry had arrived. To anyone with his general police experience and with his intimate knowledge of the whole lottery tickets affair the charges themselves must have conveyed to him the view regarding himself which the Board of Inquiry had formed. The only thing he was not aware of was the precise words in which these view were expressed. So much for his view of the matter.

Rigby, J., however, looked at the matter in a way which calls for much more careful consideration. His view was that it was :

" impossible to say that the findings of the Board of Inquiry must not inevitably have prejudiced the mind of the Adjudicating Officer against the Plaintiff in relation to the disciplinary charges preferred against him. I do not for a moment suggest that on the evidence that he heard he would not have come to precisely the same finding on the disciplinary charge. But the very fact that he was furnished with, and read, the findings of the Board must, in my view, to put it at its lowest, have created a very real likelihood that he would have a pre-determined bias or - to use the words of Lord O'Brien, C.J., in the case of R. v. Queen's County, J.J., (6) - 'an operative prejudice, whether conscious or unconscious' against the Plaintiff in respect of the disciplinary charges upon which he was to adjudicate."

Then, as I have already said, he came to the conclusion that the furnishing of a copy of the findings of the Board of Inquiry to the Adjudicating Officer coupled with the fact that no such copy was furnished to Inspector Kanda:

" amounted to such a denial of natural justice as to entitle this Court to set aside these proceedings on this ground. It amounted, in my view, to a failure to afford the Plaintiff a reasonable opportunity of being heard in answer to the

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charge preferred against him which resulted in his dismissal".

In other words Inspector Kanda was not given a "reasonable opportunity" of being heard because there was a likelihood that the Adjudicating Officer who heard him would have a "pre-determined bias" against him by reason of having read the report of the Board of Inquiry, although it is difficult to understand how this would have been otherwise had a copy of the report been supplied to Inspector Kanda.

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In proceedings at Police Orderly Room the Adjudicating Officer is acting at the very lowest in a quasi-judicial capacity. That being so the most suitable test to be applied in the present case is probably to be found in the judgment of Slade, J., in the case of Regina v. Camborne Justices & Anor. Ex parte Pearce(7). After considering a number of cases including Rex v. Justices of Queen's Co. (Supra) His Lordship said (at p.51) :-

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" to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceedings, a real likelihood of bias must be shown."

Again, with regard to the possibility of a judicial officer being influenced by the opinions of others I would quote the words of Lord Parker, C. J., in the case of Reg. v. Duffy Ex parte Nash(8) Where his Lordship said (at p.327):-

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" The question always is whether a judge would be so influenced by the article that his impartiality might well be consciously, or even unconsciously, affected. In other words, was there a real risk, as opposed to a remote possibility, that the article was calculated to prejudice a fair hearing?"

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With regard to this question of whether

(7) (1955) 1 Q.B. 41.

(8) (1960) 3 W.L.R. 320.

there was any real likelihood of Mr. Strathairn being prejudiced in any way by having sight of the report of the Board of Inquiry I would repeat some of what I have said in relation to Inspector Kanda. Mr. Strathairn was a Police Officer and having reached the position of being Chief Police Officer in the State of Penang it is safe to assume that he was a Police Officer of very long experience and one very familiar with the organisation and ways of the Police Force, even although as he himself admitted in evidence this was the first occasion on which he had acted as Adjudicating Officer in a case of this sort. By reason of having seen the statements made before the Board of Inquiry, which it was necessary he should see by reason of the nature of the procedure at a Police Orderly Room and having seen the charges on which he was instructed to adjudicate he would have been well aware of the contents of the Board's report even if he had not seen it. Some of the actual words used by the Board are perhaps peculiar. The actual words, however, are of little importance. To any experienced Police Officer, to Mr. Strathairn and to Inspector Kanda alike, given the statements and given the charges it was as clear as a pikestaff that the Board had formed the opinion that Inspector Kanda had played a leading part in an attempt to produce what would have been a miscarriage of justice. That in the nature of things was unavoidable.

The truth, however, is that there is not a scrap of evidence to show that Mr. Strathairn had any sort of personal bias against Inspector Kanda. He had the benefit, which the Board of Inquiry did not have, of having the witnesses cross-examined by Inspector Kanda. There is nothing to suggest that he was not well aware of what his duty was, that it was to form an unbiased independent judgment of his own on the evidence as it was given before him nor is there anything to suggest that he failed in any way in doing his duty.

I am not at all sure what Lord O'Brien, C.J., had in his mind in referring to "an operative prejudice, whether conscious or unconscious" in the Irish case that has been mentioned (but of which I have not seen the report).

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Here, however, I can find no evidence of anything of the sort and it would be wrong to speculate as to the bare possibility of its existence. It has long been a forensic commonplace that it is impossible for a Court to know the conscious mind of man. How then can we know what is in his unconscious mind which is something he himself does not know? In all the circumstances of the present case I should have thought if there was any question of unconscious bias it would be an unconscious bias in favour of Inspector Kanda resulting from the efforts of an honest man (there is no suggestion that Mr. Strathairn is not an honest man) to do his duty and not allow himself to be affected by improper considerations.

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It is most unfortunate that the case of Pearce (Supra) was not brought to the notice of the learned trial Judge. And of course Reg. v. Duffy (Supra) was not decided until after the present case. Had these cases been available to Rigby, J., and had he in the light of them applied the test of whether, in the words of Slade, J., there was a "real likelihood of bias" or whether, in the words of Lord Parker, there was "a real risk as opposed to a remote possibility" of a fair hearing being prejudiced, it is at the lowest possible that, as I do now, he would have answered the questions embodied in these tests in the negative.

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In all the circumstances of the case I would allow the appeal and make an order in favour of the appellant for costs here and in the Court below and I would formally dismiss Inspector Kanda's cross-appeal.

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Kuala Lumpur;
9th December, 1960.

Sgd. J. B. Thomson
CHIEF JUSTICE,
Federation of Malaya.

The Hon: the Attorney-General and I. Talog
Davies Esq., for Appellant.
Jag-Jit Singh, Esq., for Respondent.

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TRUE COPY

Private Secretary
to Chief Justice.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYAIN THE COURT OF APPEAL AT KUALA LUMPURF.M. Civil Appeal No:30 of 1960In the Court
of Appeal at
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Between

The Government of the
Federation of Malaya ... Appellant

And

B. Surinder Singh Kanda Respondent

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1960Coram: Thomson, C.J.
Hill, J.A.
Neal, J.JUDGMENT OF HILL, J.A.

This is an appeal by the Government of the Federation of Malaya against the decision of the High Court, Penang, in Civil Suit 232/59 given on the 24th March, 1960.

The Respondent was the plaintiff in the Court below. His substantive rank in the Police Force was that of Police Inspector. On the 7th day of July, 1958, he was dismissed from the Police Force by the then Commissioner of Police.

The Respondent claimed a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by one, Mr. W.L.R. Carbonell, the then Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958, was void, inoperative and of no effect and that he was still a member of the said Police Force. He further asked for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

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The Plaintiff based his claim on two grounds, one a matter of law, and the other of mixed law and fact. First, he contended that, as a matter of law, by virtue of the Federal Constitution which became the supreme law of the Federation of Malaya as from the 31st day of August, 1957, the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission. Secondly, he contended that even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable opportunity of being heard before the order of dismissal was made against him.

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On the first ground, after considering the provisions of the Police Ordinance 1952, and the Constitution, the learned trial judge stated :

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" In my view, bearing in mind what I conceive to be the purport and intent of the provisions of Part X of the Constitution, the previously existing statutory powers of the Commissioner of Police to appoint, confirm, promote, and dismiss Superior Police Officers were impliedly revoked by Article 144, which places such powers in the hands of the Police Service Commission and, to that extent, the relevant Sections of the Police Ordinance conferring these powers upon the Commissioner of Police must be regarded as "modified", that is to say, repealed."

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Finally the learned trial judge stated:

" In my view, on a construction of Article 144(1), read in conjunction with Article 135(1) of the Federal Constitution, at the time of his dismissal, the power to appoint and consequently the power to dismiss the Plaintiff was vested in the Police Service Commission, and the Commissioner of Police, as an authority subordinate to the Police Service Commission, had no power to dismiss him. I should, perhaps, add that the fact

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that the Commissioner of Police is an authority subordinate to the Police Service Commission is expressly admitted by the Defendants in their pleadings. It follows that, in my view, the Plaintiff's purported dismissal by the then Commissioner of Police on the 7th day of July, 1958, was void and inoperative, and he is accordingly entitled to the declaration and consequential orders which he seeks in his Statement of Claim."

The learned trial Judge then dealt with the second ground of the claim. He dealt most comprehensively with the facts. For the purposes of this appeal I think a bare outline of the facts is all that is necessary.

In December 1957 a Board of Inquiry was appointed by the then Commissioner of Police to enquire into the failure to obtain convictions in a forged lottery tickets case. The Board sat during December 1957 and January 1958 and recorded unsworn statements from a number of witnesses. The findings of the Board were extremely adverse to the Respondent. Its Report stated inter alia that Inspector Kanda is the villain of the piece. The Board found not only that Inspector Kanda had suborned the Police witnesses with the object of simplifying and short-circuiting certain evidence, but also that he had suborned the two Police informers with the very much more sinister motive "dishonestly to strengthen the case against both accused in order to ensure a conviction in Court". In paragraph 72 of its Report the Board stated that they were "forced to the conclusion that Inspector Kanda is a very ambitious and a thoroughly unscrupulous officer who is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods."

The next step was the appointment of Mr. H.W. Strathairn, acting Chief Police Officer, Penang, as Adjudicating Officer to hear charges that had been preferred against the Respondent.

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Enclosed with his letter of appointment was a copy of the findings of the Board of Enquiry.

At this stage I think it will be convenient to deal separately with the two grounds of the Respondent's claim.

In dealing with what I will call the Constitutional question that is whether the Police Commission or the Commissioner of Police had the power on the 7th day of July, 1958, to appoint and to dismiss officers of the Respondent's rank, I think the following articles of the Constitution at that date should be considered, namely articles 4(1); 135(1); 140(1); 144(1); 160 and 176. 10

For ease of reference the relevant portions of these articles are set out below:-

"4(1). This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void." 20

"135(1). No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank." 30

"140(1). There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force and which, subject to the provisions of any existing law, shall be responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force." 40

"144(1). Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the

duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

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10 "160(2). In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

"Existing law" means any law in operation in the Federation or any part thereof immediately before Merdeka Day;"

20 "176(1). Subject to the provisions of this Constitution and any existing law, all persons serving in connection with the affairs of the Federation immediately before Merdeka Day shall continue to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

30 (2). This Article does not apply to the High Commissioner or the Chief Secretary."

Article 4(1) appears to establish that laws existing before Merdeka Day are not void because of inconsistency with the Constitution.

By Article 135(1) the power to dismiss is vested in the authority having the power to appoint.

40 Article 140(1) gives the Police Commission the necessary jurisdiction, subject to Article 144, over members of the Police Service.

Article 144(1) imposes on all Commissions the duties therein set out, subject to the provisions of any existing law and to the provisions of the Constitution.

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The question that this Court is required to answer is what is the meaning of article 144 (1) of the Constitution. In the first place I think it is essential to bear in mind that the jurisdiction of the Police Commission conferred by article 140 is subject to the provisions of article 144 and therefore also subject in my view to the provisions of existing law.

I consider the words "subject to" should be construed in this context as words of limitation or restriction in conformity with what was said in *Smith v. London Transport Executive* (1951) A.C. 555.

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It seems to me that the answer to the above question must depend on what is meant by existing law.

By the definition of "existing law" in article 160 the Attorney-General contended that meant a law in operation immediately before Merdeka Day. That the definition does not refer to a law in operation on Merdeka Day and that therefore excluded any question that "existing law" meant a law modified by article 162 because that article was not itself in operation immediately before Merdeka Day.

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When considered in relation to article 176(1) the Attorney-General's contention appears to me eminently reasonable. The powers and functions contained under this article remain in existence unless and until modified in accordance with the provisions of article 162.

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At the risk of over-simplifying what is undoubtedly an important constitutional issue, I find it sufficient to say that I am in agreement with the argument of the learned Attorney-General. It appears to me to be consistent with each and every of the articles I have referred to and which are relevant to this appeal.

The Police Ordinance 1952, was therefore in my opinion, an "existing law" as defined by article 160. By Sec.9(1) of this Ordinance the Commissioner of Police is empowered to appoint a Superior Police Officer, and Sec. 45 in conjunction with the 1st Schedule to the Ordinance

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empowers the Commissioner of Police to dismiss such an officer who is found guilty of an offence against discipline. The Respondent was a superior police officer.

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10 What then is the meaning of Article 144 (1) ? I see no reason why the words of this Article should not be given their plain, ordinary meaning and feel that by doing so no inconsistency or frustration of the Article is created in the light of Article 4(1) and the definition in Article 160. Moreover, it is to be observed again that by Article 176 the powers of the Commissioner of Police were continued on Merdeka Day.

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20 The disciplinary powers remaining with the Police Commission are to be found in Section 8(1) of the Police Ordinance and it follows in my opinion that the purpose of Article 144(1) is not defeated or frustrated by giving it the above meaning.

We were referred to the recommendations in the Reid report with regard to the preservation of the Commissioner of Police's powers. Without, however, taking this aspect into consideration I am of the opinion that on the 7th day of July, 1958 the then Commissioner of Police had the power to dismiss the Respondent.

30 I appreciate that the above opinion, if correct, will mean that appointments of Police Inspectors made by the Police Commission since Merdeka are ultra vires the Constitution, the power to appoint such persons being still vested in the Commissioner of Police. It is not, however, for me to suggest the remedy. Moreover, in view of my interpretation of Article 144(1) I do not consider any modification of the Police Ordinance is necessary, as contemplated by Article 162(6), by this Court.

40 The only other meaning I can contemplate for Article 144(1) is to interpret it as providing by implication for the substitution of the Police Service Commission for the Commissioner of Police in the Police Ordinance and imposing on the Commission the duty to appoint, etc., subject to the provisions of the Police

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Ordinance. But this is in itself a modification by way of amendment of that Ordinance and, as I see it, does not give to the words of the Article their plain ordinary meaning. For these reasons I feel compelled to reject this alternative.

With regard to the second ground of Respondent's claim Rigby, J. felt obliged to set aside the Orderly Room proceedings before the Adjudicating Officer as he felt there had been such a denial of natural justice. He set out his reasons for this conclusion as follows :-

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" But the inference appears to me irresistible that his mind must have been seriously prejudiced, whether consciously or unconsciously, against the Plaintiff by the most damning Findings that he had before him contained in the unanimous Report of the Board of Inquiry presided over by Mr. Yates. In my view, it was contrary to the fundamental principles of justice which govern a fair trial that the Adjudicating Officer should have had before him, both before and during those disciplinary proceedings, the wholly adverse Report of the Board of Inquiry against the accused person whom he was then trying on these charges.

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But the matter does not end there. Whilst the Adjudicating Officer had before him a copy of these Findings no such copy had been supplied to the Plaintiff even though they most materially and injuriously affected him not only in relation to the disciplinary charges which he was then facing, but also as to the matter of sentence upon his conviction on those charges. He had no opportunity to deal with the Findings contained in that Report or to refute or challenge them in any way.

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In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the Plaintiff, amounted to such a denial

of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the Plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his demissal."

10 I fully appreciate the learned trial Judge's anxiety to ensure that justice should not only be done but should appear to be done, but in the final result it is the reality not the appearance that is the ultimate aim. In this instance it is to be observed that the Respondent did not base his claim on bias or prejudice on the part of the Adjudicating Officer nor did he produce any evidence to suggest such a state of mind.

20 The Respondent's case was that in breach of the provisions of Article 135(2) of the Constitution he had been dismissed without being given a reasonable opportunity of being heard (a) before conviction, and (b) after conviction and before sentence.

30 It is possible that the Adjudicating Officer was unconsciously prejudiced owing to the procedure adopted, but there is no evidence that he was. On the contrary, with reference to two witnesses who the Adjudicating Officer was instructed to call after the termination of his inquiry on 10th May, 1958, he had this to say (page 82 of record) :

" In considering which witnesses should be called at the Defaulter Report proceedings I had deliberately omitted calling these two witnesses since I realised that their evidence might be very prejudicial to the accused."

40 To my mind such a statement indicated a complete lack of bias on the part of the Adjudicating Officer.

It is to be remembered too that the proceedings adopted were the usual police proceedings and in conformity with the Police regulations. Such proceedings could invariably result in unconscious bias in the mind of any or

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all Adjudicating Officers as a result of know-
ledge of the proceedings before and the find-
ings of Boards of Inquiry.

The Respondent was clearly familiar with
this procedure and he stated before the Adjudi-
cating Officer (I have seen the original record
of the Orderly Room Inquiry) that he knew the
charges against him were the result of investi-
gations of the Board of Inquiry. Had it been
necessary for this astute officer to know the
findings of the Board for the purposes of his
defence, he could have asked for them. I can-
not believe that he could not have known of
their existence.

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Article 135(2) of the Constitution states
that no member of such a service as aforesaid
shall be dismissed or reduced in rank without
being given a reasonable opportunity of being
heard.

On this aspect of the case the learned
trial Judge found as follows: (p.129 and 130 of
Record).

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" The argument put forward on ground (a) is
that copies of various statements made by
witnesses and copies of Police documents
for which he had asked before his trial
as being relevant to his defence were
either not supplied to him at all, or
supplied too late to give him an adequate
opportunity to prepare his defence. Sub-
ject to one vitally important qualifica-
tion, to which I shall later refer, I am
satisfied that copies of all documents
relevant to his defence were supplied to
him, and I find no substance in this con-
tention.

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As to ground (b), Mr. Jag-Jit Singh sub-
mitted on the authority of the decision
of the Privy Council in the case of the
High Commissioner for India v. I.M.Lall (1)
that the Plaintiff had a right to be heard
both at the time when the charges against

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(1) (1948) A.I.R. (P.C.) Vol.35, p.121.

10 him were being inquired into by the Adjudicating Officer and after conviction when the question arose as to the proper punishment to be awarded. I accept that as correct. I have already said that I am satisfied that the Adjudicating Officer, after notifying the Plaintiff that the case against him on the original charge had been proved, intim-
 20 ated to him sufficiently clearly that in view of the serious nature of the charge he proposed to recommend his dismissal. The Plaintiff was then asked if he had anything to say and what he did say was duly recorded by the Adjudicating Officer and forwarded to the Commissioner of Police, for his consideration as to whether or not he should confirm the recommendation for his dismissal. In my view that was a sufficient compliance with the requirements of Article 135(2)."

With this finding I respectfully agree and this quite irrespective of whether the decision of the Privy Council in the case of the High Commissioner for India v. I.M. Lall applies.

Rigby, J. further stated :

30 " I do not for a moment suggest that the proceedings were not conducted by the Adjudicating Officer with the maximum fairness and impartiality nor, I repeat, do I suggest that on the evidence called before him he was not perfectly entitled to find the charges against the Plaintiff fully proved and to recommend his dismissal."

40 With this view I entirely agree. But I cannot agree as the Learned Judge went on to state that the inference appears irresistible that the Adjudicating Officer's mind must have been seriously prejudiced, whether consciously or unconsciously, against the Respondent. I repeat that in my view such a prejudice is a bare possibility only and not to be inferred as an irresistible inference from the evidence or from the circumstances of the Orderly Room proceedings.

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continued

It follows therefore that I am unable to agree with the learned trial Judge that the proceedings before the Adjudicating Officer were in any way a denial of natural justice.

I have not mentioned the "numerous" decisions which were cited to us for though I have referred to them I have come to the above conclusions on my own interpretation of the relevant Articles of the Constitution and for the other part on the facts found to be established by the learned trial Judge and from the record.

10

I would therefore allow this appeal and set aside the whole of the decision of the lower Court. The Appellant to have the costs here and in the Court below. I would also dismiss the cross-appeal.

(Sgd.) R.D.R. Hill

JUDGE OF APPEAL
FEDERATION OF MALAYA

20

Kuala Lumpur,
9th December, 1960.

Certified true copy.

Sd/-
(C.S.Kumar) 10/12/60.

Secretary to Judges of Appeal
Court of Appeal
Federation of Malaya.

189.

NO.19 ORDER OF COURT OF APPEAL
IN THE SUPREME COURT OF THE FEDERATION OF
MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR
FEDERATION OF MALAYA CIVIL APPEAL

NO.30 OF 1960

In the Court
of Appeal at
Kuala Lumpur

No.19

Order of Court
of Appeal
9th December,
1960.

BETWEEN

The Government of the
Federation of Malaya ... Appellant

AND

10 B. Surinder Singh Kanda ... Respondent

(In the matter of Penang High Court
Civil Suit No.232 of 1959

Between

B.Surinder Singh Kanda .. Plaintiff

And

The Government of the
Federation of Malaya .. Defendant)

BEFORE:

20 THE HONOURABLE DATO' SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE,
FEDERATION OF MALAYA;

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,
JUDGE OF APPEAL;

AND

THE HONOURABLE MR.JUSTICE NEAL, B.E.M.,P.J.K.

IN OPEN COURT

This 9th day of December, 1960.

O R D E R

THIS APPEAL coming on for hearing on

In the Court
of Appeal at
Kuala Lumpur

No.19

Order of Court
of Appeal
9th December,
1960
continued

the 22nd and 23rd day of August, 1960, in the presence of Mr. C.M. Sheridan the Attorney-General and Mr. I. Talog Davies, Senior Federal Counsel, for and on behalf of the Appellant and Mr. Jag-Jit Singh of Counsel for the Respondent AND UPON READING the Record of Appeal and the Notice of Cross-Appeal filed herein AND UPON HEARING the arguments of Counsel for both parties as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Counsel for both parties as aforesaid IT IS ORDERED that this Appeal be and is hereby allowed and that the whole of the judgment herein of the Honourable Mr. Justice Rigby given on the 24th day of March, 1960, at Penang be set aside AND IT IS ORDERED that the Respondent do pay to the Appellant the costs of this Appeal and the costs in the Court below as taxed by the proper officer of the Court AND IT IS FURTHER ORDERED that the sum of \$500.00 (Dollars five hundred only) deposited by the Appellant in the High Court at Penang as security for the costs of this Appeal be refunded to the Appellant AND IT IS LASTLY ORDERED that the Cross-Appeal by the Respondent be and is hereby dismissed.

10

20

Given under my hand and the Seal of the Court this 9th day of December, 1960.

30

(Sd.) SHIV CHARAN SINGH

ASSISTANT REGISTRAR,
COURT OF APPEAL,
FEDERATION OF MALAYA.

NO.20 ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

FEDERATION OF MALAYA CIVIL APPEAL NO.30 OF 1960

In the Court
of Appeal at
Kuala Lumpur

No.20

BETWEEN

The Government of the
Federation of Malaya ... Appellant

And

B. Surinder Singh Kanda ... Respondent

Order Granting
Conditional
Leave to Appeal
20th December
1960

(In the matter of Penang High
Court Civil Suit No.232 of 1959

Between

B. Surinder Singh Kanda ... Plaintiff

And

The Government of the
Federation of Malaya ... Defendant)

Coram:-

The Hon'ble Dato Sir James
Thomson, P.M.N., P.J.K.,
The Chief Justice, Federation of
Malaya;

The Hon'ble Mr. Justice Ong;
The Hon'ble Mr. Justice Ismail
Khan.

IN OPEN COURT

THIS 20TH DAY OF DECEMBER 1960

O R D E R

UPON MOTION being made unto the Court
on the 20th day of December 1960 by Mr. Jag-Jit
Singh of Counsel for the Plaintiff/Respondent
in the presence of Mr. I. Talog Davies Senior
Federal Counsel, for and on behalf of the De-
fendant/Appellant AND UPON READING the Notice
of Motion dated the 12th day of December, 1960,
the Affidavit of B. Surinder Singh Kanda dated

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20

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In the Court
of Appeal at
Kuala Lumpur

No.20

Order Granting
Conditional
Leave to Appeal
20th December
1960
continued

the 10th day of December 1960 and filed herein on the 12th day of December 1960 AND UPON HEARING COUNSEL as aforesaid for the parties IT IS ORDERED that leave be and is hereby granted to the Plaintiff/Respondent abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of the Court of Appeal dated the 9th day of December, 1960 upon the following conditions :-

(a) That the Plaintiff/Respondent do within a period of three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of the Supreme Court in the sum of Dollars Five thousand only (\$5000/-) for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Defendant/Appellant in the event of the Plaintiff/Respondent not obtaining an Order granting him final leave to appeal or of the Appeal being dismissed for non-prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Plaintiff/Respondent to pay the Defendant/Appellant's costs of the Appeal, as the case may be; and

(b) That the Plaintiff/Respondent do within three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England.

AND IT IS LASTLY ORDERED that the execution of the judgment of the Court of Appeal dated the 9th day of December 1960 be stayed pending the prosecution of the Appeal to His Majesty the Yang di-Pertuan Agong and the decision therein of His Majesty the Yang di-Pertuan Agong, subject to the Plaintiff/Respondent paying the Defendant/Appellant's Solicitor the Defendant/Appellant's taxed costs in this Court and in the Court below upon the undertaking by the Defendant/Appellant's Solicitor to refund the same in the event of the Plaintiff/Respondent's Appeal being allowed.

Given under my hand and the seal of the Court this 20th day of December 1960.

Sd. Shiv.Charan Singh.
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

10

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NO.21 ORDER GRANTING FINAL LEAVE TO APPEAL
IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
FEDERATION OF MALAYA CIVIL APPEAL NO.30 OF 1960

In the Court
of Appeal at
Kuala Lumpur

No.21

BETWEEN

THE GOVERNMENT OF THE
FEDERATION OF MALAYA ... Appellant

- and -

B. SURINDER SINGH KANDA ... Respondent

Order Granting
Final Leave to
Appeal to His
Majesty, the
Yang di-Pertuan
Agong.
7th February
1961

10

(IN THE MATTER OF PENANG HIGH COURT
CIVIL SUIT No.232 OF 1959

BETWEEN

B. SURINDER SINGH KANDA ... Plaintiff

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYA ... Defendant)

BEFORE :

THE HON'BLE DATO SIR JAMES THOMSON,
P.M.N. P.J.K.
CHIEF JUSTICE, FEDERATION OF MALAYA;

20

THE HON'BLE MR.JUSTICE GOOD, JUDGE OF
APPEAL: and

THE HON'BLE MR.JUSTICE ISMAIL KHAN

IN OPEN COURT

THIS 7TH DAY OF FEBRUARY, 1961

O R D E R

UPON MOTION being made unto the Court
this day by Mr. Ranjit Singh on behalf of Mr.

195.

Plaintiff's Exhibits

EXHIBIT 'A2' - PLAINTIFF'S LETTER TO C.P.O.

Plaintiff's
Exhibits

Insp. Surinder Singh Kanda,
Contingent CID Headquarters,
Central Police Station,
Penang.

A2.

Plaintiff's
letter to
C.P.O.
11th November
1957.

11.11.57.

The Chief Police Officer,
Penang & P.W.
Police Headquarters,
Penang.

10

Through the proper channels

Sir,

I have the honour to apply for the favour
of a personal interview with you at your earli-
est convenience.

This request is in connection with my ap-
pearance before a promotion board of the Police
Services Commission on the 7th Nov. '57, where-
in one of the members of the board after refer-
ence to my personal file asked me the question,
"Are you not at the moment under a cloud re-
garding a certain investigation". I was then
requested to explain all about it.

20

I was astonished that the Board had been
given to understand that I was 'under a cloud'
when in fact up till now I have been assured by
the OCCI Penang that there is no investigation
on me or a charge against me.

30

I feel very perturbed over the asking of
this question by one of the members of the Pro-
motion Board, which I feel is detrimental to my
career and has negated my chances of promotion.

I respectfully request that I be allowed
to see my personal file to apprise myself of
any adverse comments against me regarding this
case in order that I may be allowed a chance to
exonerate myself.

I make this request in accordance with the

Plaintiff's
Exhibits

A2.

Plaintiff's
letter to
C.P.O.
11th November
1957
continued

reply, from the Commissioner of Police to The Senior Police Officer's Association, at a meeting held on the 20th Nov. '56 regarding adverse comments against an Officer.

The Commissioners reply stated inter-alia.

- (1) That adverse comments would invariably be communicated to the Officer concerned in writing.
- (11) The Officer concerned would invariably be required to acknowledge receipt of this in writing. 10
- (111) At the time of sending this acknowledgment the Officer concerned would be permitted to make observations in his defence.
- (1V) The acknowledgments and comments would be permanently filed with the confidential report provided the comments were adjudged to be relevant. 20

Thanking you in anticipation.

I have the honour to be,
Sir,
Your obedient servant,

(Surinder Singh Kanda)

A3.

EXHIBIT 'A3' - PLAINTIFF'S LETTER TO C.P.O.

Plaintiff's
letter to
C.P.O.
25th November
1957.

Insp. B. Surinder Singh Kanda,
Contingent C.I.D. Headquarters,
Central Police Station Penang.

25th November, 1957. 30

The Chief Police Officer,
Penang & P.W.
Police Headquarters,
Penang.

Through Proper Channels.

Sir,

I have the honour to humbly and respectfully

request for a reply to my letter dated the 11th November, 1957, requesting for the favour of a personal interview with you please.

Plaintiff's
Exhibits

A3

I have the honour to be,
Sir,
Your obedient servant,
Sd: (Surinder Singh Kanda).

Plaintiff's
letter to
C.P.O.
25th November
1957
continued

A4 - PLAINTIFF'S LETTER TO C.P.O.

A4

2nd REMINDER TO 'A2', 10.12.57.

Inspector B.Surinder Singh Kanda,
Contingent C.I.D. Headquarters,
Central Police Station,
PENANG.

Plaintiff's
letter to
C.P.O.
10th December
1957.

10th December, 1957.

The Chief Police Officer,
Penang & Province Wellesley,
Police Headquarters,
PENANG.

Through the proper channels.

Sir,

I have the honour to humbly and respectfully request for a reply to my letter dated the 11th November, 1957, requesting for the favour of a personal interview with you, and to the reminder sent on 25/11/57.

Thanking you in anticipation.

I have the honour to be,
Sir,
Your obedient servant,

Sd: (B.Surinder Singh Kanda).

Plaintiff's
Exhibits

EXHIBIT A9-10 - LETTER FROM C.P.O. PENANG

A9 & A10

TO PLAINTIFF, AND ENCLOSURE

Letter from
C.P.O. Penang
to Plaintiff
and enclosure.
1st April 1958

(SR) I/1547

CONTINGENT POLICE HEAD QUARTERS,
PENANG

Confidential

1 APRIL, 1958.

Inspector B. Surinder Singh Kanda.

Thro' O.C.C.I. Penang.

Sub: Departmental Proceedings

I have to inform you that following upon the report of the Board of Enquiry held into the allegations arising from Penang High Court Criminal Trial No. 11/57 Departmental Proceedings will be taken against you upon the attached charges.

10

2. These charges will be heard by myself at 1000 hrs. on Wednesday 9th April, 1958. You are advised that every opportunity will be given to you to call witnesses on your behalf.

3. Please acknowledge receipt of this letter on the attached form.

20

(H.W. Strathairn)
Chief Police Officer
PENANG.

That you at Penang between the 29 of May and 10th July, 1957, whilst performing your duties as a Police Inspector engaged in preparing George Town I/P.1025/57, did fail to disclose evidence of the facts of which particulars are set out below which, to your knowledge, could be given for (B1) LOH MEOW KOOI and (B2) ANG KENG CHEOW, charged with the offence of possession of forged lottery tickets, an offence under Sec.474 Penal Code, and thereby committed an offence against Regulation 2(a) 44 of the Police Regulations 1952 and punishable under Sec. (1) of the Police Ordinance 1952.

30

ParticularsPlaintiff's
Exhibits

- (a) That ONG HUAN ENG and D/Sgt. 647 KOO CHENG HOE were present at the meeting at Sepoy Lines, Penang, on 25 and 26th May, 1957.
- (b) That Insp TEOH EE SAN introduced D/Sgt. 356 LO THEAN GUAN to KOE AH HUAT at Sepoy Lines, Penang, on 25.5.1957.
- 10 (c) That the bundle of forged lottery tickets was carried into the room at the Whitehouse Hotel, Penang, on 29.5.57 by KOE AH HUAT.
- (d) That ANG KENG CHEOW was not present outside the HOOI LAI Association on 29.5.57 when first accused LOH MEOW KOOI obtained the forged lottery tickets.

A9 & A10

Letter from
C.P.O. Penang
to Plaintiff
and enclosure.
1st April 1958
continued

20 Alternatively, that you at Penang on or about 10 July 1957 did submit George Town I/P. 1025/57 to the O.C.C.I. Penang, knowing the same to be false in the particulars set out below, and that you are thereby guilty of conduct to the prejudice of good order and discipline, an offence against Regulation 2(a) 65 of the Police Regulation 1952 and punishable under Sec. 45(1) of the Police Ordinance 1952.

Particulars

- 30 (a) That no mention was made of the fact that ONG HUAN ENG and D/Sgt. 647 were present at the meetings at Sepoy Lines on 25 and 26 May, 1957.
- (b) That the Investigation Paper disclosed that Insp NG HOON FUAN introduced D/Sgt 356 LO THEAN GUAN to KOE AH HUAT at the Sepoy Lines on 25th May 1957 when this introduction was, in fact, made by Insp TEOH EE SAN.
- 40 (c) That the Investigation Paper disclosed that the bundle of forged

Plaintiff's Exhibits

A9 & A10

Letter from C.P.O. Penang to Plaintiff and enclosure 1st April 1958 continued

lottery tickets was carried into the room at the Whitehouse Hotel on 29 May 1957 by first accused LOH MEOH KOOI when in fact this bundle was carried into the room by KOE AH HUAT.

- (d) That the Investigation Paper disclosed that second accused ANG KENG CHEOW handed the bundle of forged lottery tickets to first accused LOH MEOH KOOI outside the Whitehouse Hotel on 29 May 1957 when, in fact, second accused ANG KENG CHEOW was not present on that occasion.

10

A45

EXHIBIT A45 - CHARGE UNDER REGULATION 2(a)(8),

Charge under Regulation 2(a)(8), Police Regulation 1952.

POLICE REGULATIONS, 1952

POLICE DEFAULTER REPORT

Station: Central District: George Town
Contingent: Penang.

Number 1547 Rank: Inspector Name: B. Surinder Singh Kanda.

20

Charge:

That you at Penang in July, 1957, did wilfully disobey a lawful command in that you failed to carry out the instruction of ASP Tan Chin Teik to subpoena Insp. Teoh Ee San to attend a hearing in the Sessions Court, Penang, into a case concerning forged lottery tickets and you thereby committed an offence against Sec. 2(a) 8 of the Police Regulations 1952 punishable under Sec.45(1) Police Ordinance 1952.

30

EXHIBIT 'A70' - LETTER FROM PLAINTIFF TO
C. of P.

Plaintiff's
Exhibits

A70

CONFIDENTIAL

CONTINGENT CID HEADQUARTERS
CENTRAL POLICE STATION
PENANG

16th May, 1958

Letter from
Plaintiff to
the Commis-
sioner of
Police
16th May 1958

The Commissioner of Police,
Federation of Malaya Police Force,
Federal Police Headquarters,
Bluff Road,
Kuala Lumpur.

Through the proper Channels.

Sir,

APPEAL AGAINST CONVICTION & SENTENCE BY
CPO PENANG IN ORDERLY ROOM CASE
AGAINST INSPECTOR B.SURINDER SINGH KANDA

I have the honour to appeal against conviction and sentence passed by the Chief Police Officer, Penang on 10th May, 1958.

2. I was charged on two counts as follows:-

(i) Under Section 2(A) 44 Police Ordinance
1952

(ii) Under Section 2(a) 8 Police Ordinance
1952.

On the first charge judgment is reserved and on the 2nd charge I was awarded a Severe Reprimand.

3. I would be most grateful if I may be given a copy of the Orderly Room records to enable me to put up my full grounds of appeal.

4. I shall be greatly obliged if I may be permitted to put my appeal before you personally.

5. Hoping that my application meets with your kind and favourable consideration and thanking you in advance.

I have the honour to be,
Sir,
Your obedient servant,

(B. SURINDER SINGH KANDA)

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30

Plaintiff's
Exhibits

A77-A78

EXHIBIT 'A77-78' - LETTER OF DISMISSAL
FROM C.P.O. PERAK TO PLAINTIFF

Letter of
Dismissal from
C.P.O. Perak
to Plaintiff
7th July 1958

(SR) I/1547

CONTINGENT POLICE HEADQUARTERS
PERAK

CONFIDENTIAL

Ipoh, 7 July, 1958.

Inspector Surinder Singh Kanda
s/o Bhagat Singh,
Thro' O.C.2. P.F.F. IPOH.

10

Vide an instruction contained in Commissioner's Standing Orders A205(1), you are hereby notified in writing that you are dismissed from the Force by the Commissioner of Police on being found guilty of an offence against discipline vide Penang Contingent Defaulter Report Serial No. 4/58, the charge reading as follows:-

"That you at Penang between the 29 of May and 10 July, 1957, whilst performing your duties as a Police Inspector engaged in preparing George Town I.P.1025/57, did fail to disclose evidence of the facts of which particulars are set out below which, to your knowledge, could be given for (B1) LOH MEOW KOOI and (B2) ANG KENG CHEOW, charged with the offence of possession of forged lottery tickets, an offence under Sec. 474 Penal Code, and thereby committed an offence against Regulation 2(A) 44 of the Police Regulations 1952 and punishable under Sec. 45 (1) of the police Ordinance, 1952.

20

30

Particulars

(a) That ONG HUAN ENG and D/Sgt. 647 KHOO CHENG HOE were present at the meeting at Sepoy lines, Penang, on 25 and 26 May, 1957.

(b) That Insp. TEOH EE SAN introduced D/Sgt. 356 LO THEAN GUAN to KOE AH HUAT at Sepoy Lines, Penang, on 25.5.1957.

40

Plaintiff's
Exhibits

A77 -A78

Letter of
Dismissal from
C.P.O. Perak
to Plaintiff
7th July 1958
continued

- (c) That the bundle of forged lottery tickets was carried into the room at the White House Hotel, Penang, on 29.5.57 by KOE AH HUAT.
- (d) That ANG KENG CHEOW was not present outside the HOOI LAI ASSOCIATION on 29.5.57 when first accused LOH MEOW KOOI obtained the forged lottery tickets.

10 Alternatively, that you at Penang on or about 10 July 1957 did submit George Town I.P.1025/57 to the O.C.C.I. Penang, knowing the same to be false in the particulars set out below, and that you are thereby guilty of conduct to the prejudice of good order and discipline, an offence against Regulation 2(A)65 of the Police Regulation 1952 and punishable under Sec.45(1) of the Police Ordinance 1952.

Particulars

- 20 (a) That no mention was made of the fact that ONG HUAN ENG and D/Sgt. 647 were present at the meetings at Sepoy Lines on 25 and 26 May 1957.
- (b) That the Investigation Paper disclosed that Insp. NG HONG FUAN introduced D/Sgt. 356 LO THEAN GUAN to KOE AH HUAT at the Sepoy Lines on 25 May 1957 when this introduction was, in fact, made by Insp. 30 TEOH EE SAN.
- (c) That the Investigation Paper disclosed that the bundle of forged lottery tickets was carried into the room at the White House Hotel on 29 May 1957 by first accused LOH MEOW KOOI when in fact this bundle was carried into the room by KOE AH HUAT.
- 40 (d) That the Investigation Paper disclosed that second accused ANG KENG CHEOW handed the bundle of forged lottery tickets to first

Plaintiff's Exhibits

A77 - A78

Letter of Dismissal from C.P.O. Perak to Plaintiff 7th July 1958 continued

accused LOH MEOW KOOI outside the White House Hotel on 29 May 1957 when in fact, second accused ANG KENG CHEOW was not present on that occasion."

Your right of appeal is detailed in the Police Regulations, 1952 - Regulation 15.

Sgd. J. R. H. BURNS
CHIEF POLICE OFFICER,
PERAK.

10

c.c.t CofP. (per).

A79

Letter from Plaintiff to Minister of Defence, and Police Service Commission. 14th July 1958.

EXHIBIT A79 - LETTER FROM PLAINTIFF TO MINISTER OF DEFENCE AND POLICE SERVICE COMMISSION.

Surinder Singh Kanda,
No.170 Jalan Bunga Chempaka,
Bukit Gluger,
Penang.

14th July, 1958.

The Hon'ble the Minister for Defence & Internal Security,
Kuala Lumpur.

20

Police Services Commission,
Federation of Malaya.

Through:
The Commissioner of Police,
Federation of Malaya,
Kuala Lumpur.

Sir,

Appeal against Conviction and sentence of dismissal of Inspector Surinder Singh Kanda vide Png. Contingent Reference SR I/1547 dated 7.7.58.

30

I have the honour to appeal against

conviction and the decision of the Commissioner of Police in dismissing me from the Federation of Malaya Police Force notified to me by the Chief Police Officer Perak vide letter SR/1547 dated 7.7.58.

I was charged under:

- (1) Reg.2(a) 44 of the Police Regulation 1952 and alternatively under Section 2(a) 65 of Police Regulations 1952.
- 10 (2) Under Reg.2(a) 8 of the Police Regulation 1952.

On the former I was awarded Dismissal and on the latter Severe Reprimand.

As I am not sure as to who the appellate Authority is I am addressing the Appeal to the Hon'ble The Minister of Defence & Internal Security and to the Police Services Commission.

I have retained Dato R.P.S Rajasooria J.P. Advocate and Solicitor to represent me and he will be forwarding the full grounds of Appeal shortly.

I have the honour to be,
Sir,
Your obedient servant,
(Surinder Singh Kanda)

EXHIBIT 'A80' - LETTER FROM DATO RAJASOORIA TO
MINISTER OF DEFENCE AND POLICE SERVICE COMMISSION

Dato R.P.S.Rajasooria J.P.
Bar-at-Law (Middle Temple) 15, Weld Road,
Advocate and Solicitor Kuala Lumpur..
and Commissioner for Oaths 15th July '58.

Ref.No.RPSR/JAT/58.

The Hon'ble The Minister for Defence
& Internal Security,
Kuala Lumpur.

The Police Service Commission,
Young Road, Kuala Lumpur.
Through The Commissioner of Police,
Federation of Malaya,
Federal Police Headquarters,
Bluff Road, Kuala Lumpur.

Sirs,

I am instructed by my client Mr. B.

Plaintiff's
Exhibits

A79

Letter from
Plaintiff to
Minister of
Defence, and
Police Service
Commission.
14th July 1958
continued

A80

Letter from Dato
Rajasooria to
Minister of
Defence and
Police Service
Commission
15th July 1958.

Plaintiff's
Exhibits

A80

Letter from Dato
Rajasooria to
Minister of
Defence and
Police Service
Commission
15th July 1958
continued

Surinder Singh Kanda who was an Inspector of Police attached to No.2 Police Field Force Ipoh to appeal against his conviction in disciplinary proceedings and dismissal from the Police Force by the Commissioner of Police communicated to my client by letter No.(SR) I/1547 dated 7th July, 1957 from the Chief Police Officer Perak.

My client has yesterday written to you appealing against his conviction and dismissal.

To enable me to submit the full grounds of appeal I have to obtain a copy of the disciplinary proceedings, a copy of the High Court Penang Criminal Trial 11 of 1957, a copy of the proceedings of the preliminary Inquiry at the Magistrate's Court at Penang leading to the said High Court Trial, and a copy of the Investigation Diary of Detective Sergeant 356 Loh.

10

I shall therefore be obliged if you will grant me a month's time to submit the full grounds of appeal.

20

I shall be further obliged if you will grant me and my client an opportunity to personally urge the appeal before you.

Yours faithfully,

Sgd: ?

A83

Letter from Dato
Rajasooria to
Commissioner of
Police.
23rd July 1958.

EXHIBIT 'A83' - LETTER FROM DATO RAJASOORIA
TO COMMISSIONER OF POLICE

RPSR/GDS/58

23rd July, 1958

The Commissioner of Police,
Federation of Malaya,
Federal Police Headquarters,
Bluff Road,
Kuala Lumpur.

30

Sir,

Appeal of Mr.Surinder Singh Kanda
against dismissal

I am in receipt of your letter to me dated 18th July 1958 bearing No.(SR) I/1547 on the above subject.

2. In view of Regulation 15 (1)(a) of the

40

Plaintiff's
Exhibits

A83

Letter from
Dato Rajasooria
to Commissioner
of Police.
23rd July 1958
continued

Police Regulations 1952 as modified by Sections 3 (1)(i) of the Federal Constitution (Modification of Laws) Order 1957, I shall be obliged if you will forward to the Hon'ble the Minister of Defence and Internal Security one of the 3 signed copies of my client's appeal dated 14th July, 1958, and one of the 3 signed copies of my letter dated 15th July, 1958.

10 3. To prepare the full grounds of appeal (1) a copy of the notes of the said disciplinary proceedings Penang Contingent Defaulter Report Serial No.4/58 and (2) a copy of the Investigation Diary of Detective Sergeant No.356 Loh which forms part of I/P George Town 1025 of 1957 are required.

4. I shall be obliged if you will furnish me with certified copies of same. I shall pay your fees on hearing from you.

20 5. The letter No.(SR) I/1547 dated 7th July, 1957 from the Chief Police Officer Perak to my client which conveys to my client that you have dismissed him on being found guilty of an offence against discipline sets out two alternative charge against him but does not state on which alternative charge he was found guilty. I shall be obliged if you will let me know on which alternative charge my client was found guilty.

Yours Faithfully,

30 EXHIBIT 'A86-87' - LETTER FROM DATO RAJASOORIA TO
MINISTER OF DEFENCE AND POLICE SERVICE COMMISSION

A86-A87

RPSR/GdS/57

14th August, 1958.

(1) The Hon'ble The Minister for Defence & Internal Security, Federation of Malaya.

(2) The Police Service Commission,
Young Road, Kuala Lumpur.

Through:

The Commissioner of Police,
Federation of Malaya.

Letter from
Dato Rajasooria
to the Minister
of Defence and
Police Service
Commission.
14th August
1958

40 Sir,

Appeal against conviction and dismissal of
Mr.Surinder Singh Kanda Police ref.CPO Perak's
letter (SR) I/1547 dated 7th July, 1958,
Police Service Commission ref.Pol.SCD./86/
106/3 of 19th July, 1958.

(A) I am submitting herewith the grounds of

Plaintiff'sExhibits

A86-A87

Letter from
Dato Rajasooria
to the Minister
of Defence and
Police Service
Commission.
14th August
1958
continued

appeal of my client Mr. Surinder Singh Kanda against his conviction in Disciplinary proceedings and punishment including dismissal awarded therefor.

(B) By my letter dated 2nd July, 1958 to the Commissioner of Police I requested inter alia that I should be furnished a copy of the Notes of the said disciplinary proceedings - Penang Contingent Defaulter Serial No.4/58. In spite of the fact that I sent him a reminder dated 7th August, 1958, I have not up to date received a copy of the said proceedings. My client is therefore unable to give extracts from the said proceedings which would substantiate his appeal still further. This is another instance whereby my client has been prevented from presenting his case fully in this matter.

10

(C) I strongly urge that the appeal should be allowed and the conviction and dismissal set aside for inter alia the following reasons :

20

(1) That the charges on which my client was tried in disciplinary proceedings were not framed in accordance with regulation 3(2) of the Police Regulations 1952, whose provisions are imperative.

The charges were not framed according to Regulation 3(2) in that (a) the charges were in respect of a number of offences, there were nine distinct offences disclosed by the charges and the offences were alleged to have been committed in the course of the same transaction, although the proviso to the said Reg.3(2) mandatorily provides that "in such circumstances only one charge shall be framed in respect of the most serious offence disclosed". (b) Although first charge disclosed 8 distinct offences they were all lumped together as one charge and contravened the mandatory provisions of the said regulation 3(2) which says :-

30

"Where there are two or more distinct offences a separate charge shall be framed in respect of each offence."

40

(c) The first charge was framed in the alternative and is therefore vitiated according to

the authorities thereon set out in my client's grounds of appeal dated 14th August, 1958.

A86- A87

(2) The finding of guilt against my client was on the first charge as set out in the alternative and is therefore vitiated according to the said authorities. My client does not even now know on which of two alternatives he has been found guilty although by my letter dated 23rd July 1958 I requested the Commissioner of Police to let me know this.

Letter from
Dato Rajasooria
to the Minister
of Defence and
Police Service
Commission
14th August
1958
continued

(3) There was no separate finding as regards each of the offences, which were 8 in number in the first charge. Thereby the mandatory provisions of the said regulation 3(2) which says :-

"A separate finding shall be made on each charge" were contravened.

(4) The disciplinary proceedings were not conducted according to the principles of Natural Justice in that

(a) My client was not given a copy of the G.T.IP. 1025/57 till after the close of the defence and he was thereby prevented from presenting his case adequately and fully to the adjudicating officer.

(b) Even of the G.T.IP 1025/57 the Investigation diary of D/Sgt.356 has not been given to him up to now.

(c) The notes of evidence of Penang High Court Criminal Trial 11/57 were not given to him, by the C.P.O. Penang even though he applied for them from the C.P.O. Penang prior to the disciplinary proceedings.

(d) The withholding of these documents contravened the Commissioner's Standing Order Part A207 para. 8.

(5) On the 10th of May 1958 he was convicted by the adjudicating officer and thereafter my client's case was forwarded to the Commissioner of Police for award of punishment. Before

Plaintiff's

Exhibits

A86-A87

Letter from
Dato Rajasooria
to the Minister
of Defence and
Police Service
Commission
14th August
1958
continued

the award of punishment of dismissal my client was not given an opportunity to appear before and be heard by the Commissioner of Police contrary to Commissioner's Standing Orders Part A207 para. 21.

(6) The conviction in the disciplinary proceedings was arrived at on perjured evidence and, on the authorities thereon set out in my client's said grounds of appeal dated 14.8.1958 should be set aside.

10

(7) The conviction in this case was arrived at contrary to the Rules of Evidence and legal standards of Proof and should therefore be set aside.

(D) I shall be obliged if you will give my client and myself an opportunity of urging this appeal personally before you.

Yours faithfully,

Advocate & Solicitor for Appellant
Surinder Singh Kanda

20

A131-A132

Police Form 9A.
Defaulter
Report Serial
No. 4/58
10th May 1958.

EXHIBIT A131-132 - POLICE FORM 9A DEFAULTER

REPORT SERIAL NO. 4/58

FEDERATION OF MALAYA

POLICE DEFAULTER REPORT

Penang Contingent D/R

Serial No.4/58

Station: Central District: George Town
Contingent Penang: Number I/1547 Rank: Inspector
Name: B. SURINDER SINGH KANDA.

Charge: As per attached
Plea: NOT GUILTY

30

Witnesses:

Prosecution

Exhibits

ASP Aloysius Chin	A1: Rough Sketch Plan of	
Ong Huan Eng (K.267628)	A2: Sessions Court,	
Kow Ah Huat (P.303257)	A3: Penang	D1
Khoo Cheng Ho, D/Sgt. 647	Letter from Insp.	
Insp. Ng Hoong Fuan	A4: Kanda to CPO Penang	
C/Insp. Teoh Ee San	A5: dated 11 Dec.'57	D2
Lo Thean Guan, D/Sgt. 356	A6: Letter from Insp.	
DSP Tan Chin Teik	Kanda to OCCI	
	A7: Penang dated 20	
	A8: June '57	D3

40

	<u>Prosecution</u>	<u>Exhibits</u>	<u>Plaintiff's Exhibits</u>
	DSP J.R. Sykes Loh Meow Kooe (P.369370) Ang Keng Cheow (P.374628)	A9: Summing up by Adjudicating Officer A10: Original Statement of Witness A10 A11: Original I.D. of Witness A7 Original Statement of " A3	A131-A132 Police Form 9A Defaulter Report Serial No. 4/58 10th May 1958 continued
	<u>Defence</u>	" A2 Original Statement of Bl: " A2 First ID of witness A5 Second ID of witness A5 Statement of Witness A11	
10	Insp. B.S.S. Kanda		
		D4 D5 D6 D7 D8 D9 D10 D11	

Finding: GUILTY ON ORIGINAL CHARGE

Punishment Recommended: Dismissal from the Force.

20 I certify that the charge(s) and statements of evidence were read over to the accused in the presence of the witnesses in a language which he understood and that the accused was given an opportunity to cross-examine the witnesses. I further certify that all the above exhibits have been produced in Orderly Room to the accused.

Sgd: Chief Police Officer,
Penang.

Adjudicating Officer.

Date: 10 May 1958.

30 Punishment approved to be as follows:

To be dismissed from the Force with effect from the date upon which this decision is communicated to the Accused in his present posting in Ipoh.

Sgd. W.L.R. Carbonell,
Commissioner of Police,
Federation of Malaya.
27.6.58.

Remarks:

40 Sentence formally notified by myself in orderly room on 7.7.58. Accused also notified right of appeal.

Sgd. J.R.H. Burns
CPO., Perak.
7.7.58.

Plaintiff's
Exhibits

EXHIBIT A135-136 - POLICE FORM 9A DEFAULTER

A.135-A136

REPORT SERIAL NO. 5/58

Police Form 9A
Defaulter Report
Serial No. 5/58.
10th May 1958.

FEDERATION OF MALAYA
POLICE DEFAULTER REPORT
Penang HQ D/R

Serial No.5/58

Station: Central District: George Town
Contingent: Penang Number: 1547 Rank: Inspector
Name: B. Surinder Singh Kanda
Charge:

10

That you at Penang in July, 1957, did wilfully disobey a lawful command in that you failed to carry out the instruction of ASP Tan Chin Teik to subpoena Insp. Teoh Ee San to attend a Hearing in the Sessions Court Penang, into a case concerning forged lottery tickets and you thereby committed an offence against Sec.2(a)8 of the Police Regulations 1952 punishable under Sec.45(1) Police Ordinance 1952.

20

Plea: NOT GUILTY

Witnesses and Exhibits:

Prosecution : Defence

DSP Tan Chin Teik : Insp. Kanda

Finding: GUILTY

Punishment Awarded: Severe reprimand.

I certify that the charge(s) and statements of evidence were read over to the accused in the presence of the witnesses in a language which he understood and that the accused was given an opportunity to cross examine the witnesses.

30

Sgd. Chief Police Officer,
Police.

10th May, 1958.

Punishment approved to be as follows :-

Severe Reprimand.

Sgd. W.L.R. Carbonell
Commissioner of Police,
Federation of Malaya.
27.6.58.

Plaintiff's

Exhibits

A135-A136

Police Form 9A
Defaulter Report
Serial No. 5/58.
10th May 1958
continued

Remarks :-

Sentence formally notified by myself
in orderly room on 7.7.57.

Sgd. J.R.H. BURNS
CPO Perak
7.7.58.

10

EXHIBIT 'A191-192' - LETTER FROM DATO
RAJASOORTA TO MINISTER OF DEFENCE
AND POLICE SERVICE COMMISSION, 3.12.58.

A191-A192

RPSR/GaS/58

15, Weld Road,
Kuala Lumpur.
3rd December, 1958.

Letter from Dato
Rajasooria to
Minister of
Defence, and
Police Service
Commission.
3rd December 1958

20

The Hon'ble The Minister of Defence
& Internal Security,
Ministry of Defence,
Brockman Road,
Kuala Lumpur.

The Police Service Commission,
Young Road,
Kuala Lumpur.

Gentlemen,

30

Ref. Appeal against conviction and
dismissal of B.Surinder Singh
Kanda, from the Police Force,
Police Ref. C.P.O. Perak's
letter (SR) I/1547 dated the
7th July '58

I thank the Hon'ble The Minister for his

Plaintiff's
Exhibits

A191-A192

Letter from Dato
Rajasooria to
Minister of
Defence, and
Police Service
Commission.
3rd December
1958
continued

letter reference MIDS 584/58(12) dated the 8th Nov. '58 in which it was stated that a definite reply will shortly be made and the Police Service Commission for its letter reference Pol. S.C.D/82/106/15 dated 4th Nov. 1958.

2.(a) I am also in receipt of letter (SR) I/1547 dated the 1st of December 1958 addressed to my client and an incomplete copy sent therewith of the disciplinary proceedings of Penang Defaulter Reports 4/58 & 5/58. It does not contain, in particular, the exhibit (D3) letter from my client to O.C.C.I. Penang dated 20.6.57 that the Penang Hotel Keepers had collected \$20,000 to find ways to put my client in trouble and (D4) the summing up by the Adjudicating Officer.

10

(b) This very much belated supply of an incomplete record strengthens one of the grounds of Appeal of my client that the decision was arrived at on perjured evidence - vide, in particular, Pages 2 - 4 of A1, pages 4 - 5 of A2, pages 2 - 4 of A3, page 2 of A4, pages 3 - 7 of A5, pages 3 - 4 of A7, pages 3 - 5 of A8 and pages 3 - 5 of A9.

20

3. It is nearly Five months since the dismissal, and nearly Four months since the submission of the grounds of appeal and yet up to date he has not received a decision on his appeal. This protracted and unexplained delay in considering the appeal and giving a decision thereon has caused and is causing my client grave hardships in the form of mental torture and exceeding financial embarrassment. He is at the moment uncertain what the future holds. The keeping of a citizen in suspense about his future is gross injustice.

30

4. In addition to the hardships which have been imposed on my client the delay is tantamount to be refusal by the appellate authority to exercise its jurisdiction.

40

5. I cannot for one moment understand why the government with the vast machinery of its Legal Department and of Civil Servants at its disposal is unable to bring about a decision on the alleged Legal Complications as stated in

Plaintiff's
Exhibits

A191-A192

Letter from Dato
Rajasooria to
Minister of
Defence and
Police Service
Commission.
3rd December
1958
continued

the letter of the Police Service Commission Ref. P.S.C.D. 82/106/15 dated the 14th Nov. '58, in this appeal. What, may I ask are the legal complications? The Law of the country is quite explicit on all points put forward in the appeal. It is a straight forward appeal wherein it is evident to anyone that :-

- 10 (i) The charges were not framed in accordance with the law and are therefore vitiated.
- (ii) That my client was not accorded all the privileges provided for in the police Regulations and Commissioner's Standing orders to enable him to make his defence.
- 20 (iii) The decision, in the Orderly Room, was arrived at on perjured evidence and contrary to the Rules of Evidence and Legal Standards of Proof, and contrary to the principles of Natural Justice.
- (iv) The Commissioner of Police failed to comply with the Commissioner's Standing Order Part A207 paragraph 21.

Thus the whole proceeding was a clear case of miscarriage of justice. The Government should therefore, without hesitation reinstate my client and right the obvious wrong done him.

6. Whilst my client was willing to wait for a reasonable time for a decision to be given he is not willing and not bound to wait indefinitely for such decision.

7. By reason of the excessive hardship my client is now subjected to and the utterly reasonable delay I am now instructed to notify you and I do hereby on behalf of my client notify you that unless a decision on the appeal is given within 14 days from the date hereof, such legal proceedings as may be appropriate will be instituted to enable my client to seek redress in a Court of Law.

Yours faithfully,

c.c. Commissioner of Police,
F.O.M.

Plaintiff's

Exhibits

A201

Exhibit A201. Letter from Secretary
for Defence to Dato Rajasooria dated
5.6.59.

Letter from the
Secretary of
Defence to Dato
Rajasooria
5th June 1959

Alamat Kawat:
Telegraphic Address:
"DEFENCE
Kuala Lumpur"

Kementrian Pertahanan
Persekutuan Tanah Melayu
Ministry of Defence,
Federation of Malaya,
Brockman Road,
Kuala Lumpur.

Talipon:
Telephone K.L.88344
No. MD T/O.584/58(38)

5th June, 1959.

10

Dato R.P.S. Rajasooria, J.P.,
15 Weld Road,
Kuala Lumpur.

Sir,

I am directed to refer to your letter
RPSR/KS/50/58 dated 25th May, 1959 to the Mini-
ster concerning the appeal of Mr. B. Surinder
Singh Kanda. The Minister wishes me to say that
the appeal has been considered by the Police
Service Commission and that he hopes to receive
the Commission's recommendations within the next
ten days.

20

I am, Sir,
Your obedient servant,
Signed (H.B. Chubb)
for Secretary for Defence

A220

Exhibit 'A220' - Letter from Jag-Jit
Singh Esq., to L.A.Massie Esq.

30

Letter from
Jag-Jit Singh
Esqre; to L.A.
Massie, Esqre.
2nd November
1959.

2nd November, 1959

JJS/CH/115/59
L.A.Massie Esq.,
Senior Federal Counsel,
Legal Adviser's Chambers,
Penang

Dear Sir,

Penang High Court Civil Suit No.232/59
B. Surinder Singh Kanda

vs.

The Government of the
Federation of Malaya.

I refer you to paragraph 4 of the State-
ment of Claim herein which you have admitted

in your Defence.

2. It has now been brought to my notice that after the 10th of May, 1958 further evidence was taken from certain witnesses.

3. I shall be obliged if you could please let me know the names of these witnesses and the dates on which their evidence was taken. May I please also know what was the necessity of this additional evidence and whether the adjudicating officer took it into consideration before he reached the decision and whether the Plaintiff was told at any time what effect this additional evidence had on his case.

4. An early reply will be very much appreciated.

Yours faithfully,
Sd. Jag-Jit Singh.

Plaintiff's
Exhibits

A220

Letter from
Jag-Jit Singh
Esqre; to L.A.
Massie, Esqre.
2nd November
1959
continued

EXHIBIT '271' - LETTER FROM L.A.MASSIE ESQ.
TO JAG-JIT SINGH ESQ.

(Gen.1252)

Legal Adviser's Chambers,
High Court Building,
Penang.

Tel: Pg.3279

Ref: LA.Pg.840.

19th November 1959.

Jag-Jit Singh Esq.,
Advocate & Solicitor,
P.O. Box 167.
Penang.

A271

Letter from
L.A.Massie Esqr.
to Jag-Jit
Singh, Esqr.
19th November
1959.

Without Prejudice

Sir,

Your Ref JJS/EJA/115/59/dated 2nd inst.
JJS/EJA/115/59/41 dated 19th inst.
Penang High Court Civil Suit No.232/59.
B.S.S.Kanda -v- The Government of the
Federation of Malaya.

I refer to your letters of above reference.

2. The names of the witnesses from whom further evidence was taken are (1) Loh Meow Kooi and (2) Ang Keng Cheow.

Plaintiff's

Exhibits

A271

Letter from
L.A.Massie Esqr.
to Jag-Jit
Singh, Esqr.
19th November
1959
continued

3. Their evidence was taken on 11th June 1958.

4. The necessity for taking the additional evidence was that it was required by the Commissioner of Police to enable him to arrive at a just decision in making his award as to punishment.

5. Plaintiff was not told at any time what effect the additional evidence had on his case. He was present when the evidence was recorded and he was permitted to cross examine the witnesses.

10

I am Sir,
Your obedient servant,
Sd: L.A.Massie
(L.A.Massie)

A362-A364

EXHIBIT A362 - 364 - LETTER FROM C.P.O.
PENANG TO C. of P.

Letter from
C.P.O. Penang
to Commissioner
of Police
23rd May 1958.

(SR)133/4/8

CONTINGENT POLICE HEAD-
QUARTERS, PENANG.

20

Confidential

23rd May, 1958.

Commissioner of Police,
(For Mr. Hindmarsh),
Kuala Lumpur.

Subject: Board of Enquiry in Penang
High Court
Criminal Trial No.11/57

Ref: Yr. (SR)133/4/8 dated 12 March, 1958

30

I send you herewith the finalised papers into Penang Contingent Defaulter Reports 4 & 5/58 against Insp. B. Surinder Singh Kanda.

2. I apologise for the delay in dealing with this matter. Witnesses have had to be brought

in and, as you will see from the evidence, recording of statements, particularly the Cross-examinations took an extremely long time.

Plaintiff's
Exhibits

A362-A364

3. Insp. Kanda, having been charged with the two offences in accordance with para.7 of your letter, submitted that I have no authority to proceed against him on both charges under Sec.3(11) of Police Regulations 1952. I overruled him.

Letter from
C.P.O. Penang
to Commissioner
of Police
23rd May 1958
continued

10 4. I find Insp. Kanda 'Guilty' in the original charge in Defaulter Report 4/58 and on this I recommend his dismissal from the Force. In Defaulter Report 5/58 I awarded a "Severe Reprimand."

5. I have the following comments to make on witnesses who appeared in the Orderly Room :-

20 (a) A1 - ASP Aloysius Chin: Didn't impress. He told one direct lie which was brought out in Question 3 in Cross-examination and he admitted that he did not take any action when he apparently, knew that an attempt was being made by Insp. Kanda to rig the original enquiry. This Officer gave false evidence in Court and was not an acceptable witness.

30 (b) A2 - Ong Huan Eng: Is a casual informer and I would say not averse to looking after his own interests. I consider, however, that his evidence was, on the whole fair and he supported all the four particulars in the charge.

(c) A3 - Koay Ah Huat: Is also an informer and of a similar type to A2. I accepted his evidence which bears out that of A2.

40 (d) A4 - Koo Cheng Ho D/Sgt.647: Supports the evidence in particular B in the first charge regarding Insp. Teoh Ee San.

(e) A5 - Insp. Ng. Hoong Fuan: This Officer

Plaintiff'sExhibits

A362-A364

Letter from
C.P.O. Penang
to Commissioner
of Police
23rd May 1958
continued

was convicted for Perjury after his evidence in the High Court. He gave his evidence clearly regarding particulars A & B of the first charge. I was impressed with his bearing and particularly, with the very convincing way in which he answered Question 24 in the Cross-examination. He did make an error over the number of one D/Sgt. This matter happened 12 months ago and I consider thereby that this was a very likely error.

10

(f) A6 - C/Insp. Teoh Ee San: This Officer bears out in particular B in the first charge. He did not do well under cross-examination but from his bearing I consider that this was again a question of time lapse and not an intentional mis-statement.

(g) A7 - D/Sgt. 356 Lo Thean Guan: This Sgt. works in the CID alongside Insp. Kanda. All the other Police witnesses, except DSP Sykes and DSP Tan Chin Teik, were from Special Branch. D/Sgt. 356 gave clear evidence in Orderly Room. He committed Perjury in High Court but I consider the evidence which he gave before me was true. He supports the particulars A, B and C.

20

(h) A8 - DSP Tan Chin Teik: He supports the evidence that Insp. Ng had been told to make a false statement in Court and he also instructed Insp. Kanda to subpoena Teoh. Cross-examination of this officer was largely on the basis of "sakit hati". The fact that he admits that he did not report to his Superior Officer when Insp. had been urged by Kanda to initially give false evidence, had already been dealt with by the Court of Enquiry. I accepted that this evidence was true, especially the remarks attributed to Sykes, referred to in the middle of page 2 (Sykes himself in Cross-examination denies this).

30

40

Plaintiff'sExhibits

A362-364

Letter from
C.P.O. Penang
to Commissioner
of Police
23rd May 1958
continued

- (i) A9 - DSP J.R.Sykes: This Officer is obviously unaware of the building up towards the false evidence which was produced in Court and states categorically that he did not give Kanda any permission, to do such a thing.
- 10 (j) B1 - Insp.B.S.S.Kanda: Relies very largely on the fact that witnesses were either perjurers of one description or another in Court and that he, as a Sikh, could hardly be expected to persuade Chinese to give false evidence. Kanda is a competent Hokkien speaker and, in fact on several occasions pointed out to myself, that the interpretation given from Hokkien witnesses was not correct. He is an extremely plausible officer and of very much higher mental ability than any of the officers who appeared in the Orderly Room with the exception of DSP Tan Chin Teik. Even as a Sikh, with his knowledge of Hokkien I consider that he would find it very easy to impress Officers junior to him and informers to give false evidence.
- 20 (k) D1 - This is a copy of the plan produced by Kanda but was only referred to in the evidence of A5.
- 30 (l) D2 - Referred to in Insp. Kanda's evidence.
- (m) D3 - The original with attachments referred to in Insp. Kanda's evidence. It should be noted that on the agenda there is of course no mention of anything to do with Kanda.
- (n) D4 - My brief Summing Up and Insp. Kanda's final statement.
- 40 (o) DE2 - Copy of the ID of D/Sgt.356, the original of the ID was in George Town IP 1025/57 and was removed from there by

Plaintiff's Exhibits

the Court of Enquiry.

A362-364

Letter from
C.P.O. Penang
to Commissioner
of Police
23rd May 1958
continued

(p) D5 and D6 are referred to in the statement of Insp. Ng Hoong Fuan and copies of the second diaries which he was called upon to make.

(q) George Town IP 1025/57. The relevant statements of this were given to Insp. Kanda towards the end of the case. Kanda was initially given copies of the relevant papers from the Court of Enquiry and certain other enclosures therein which he requested including letters which he had written to the CPO. He was given these under CSO. A.207/8. He was not given the IP initially as I considered that the charge was based on the evidence of the Court of Enquiry. Later, however, I realised that certain evidence had to be proved and he was given the necessary copies of statements.

10

20

6. Insp. Kanda has submitted an appeal against his conviction and I attach it herewith.

7. I also attach herewith, the Board of Enquiry file.

Sd. H.W.Strathairn
Chief Police Officer,
Penang.

A365-A367

Letter from
Commissioner
of Police to
C.P.O. Penang
and enclosure
5th June 1958

EXHIBIT A365-367 - LETTER FROM C.of P. TO
C.P.O. PENANG, AND ENCLOSURE.

(SR) 133/4/8.

CONFIDENTIAL

URGENT

H. W. Strathairn Esq.,
Chief Police Officer,
Penang.

POLICE HEADQUARTERS,
FEDERATION OF MALAYA,
KUALA LUMPUR.

5th June, 1958.

30

Penang Defaulter Reports 4 and 5/58

I am directed by the Deputy Commissioner

to refer to your (SR) 133/4/8 dated 23rd May 1958 and to return to you the file containing the defaulter reports and copy No.1 of the Report of the Board of Enquiry containing the original documentary exhibits.

2. I attach at Appendix "A" certain comments which I have made after reading through the Notes of Evidence relating to these defaulter reports.

10 3. The Deputy Commissioner has accepted all the comments in Appendix "A" with the exception of my para.3. He does not consider that the second defaulter case is part of the same transaction. However this is relatively unimportant as the first defaulter case is the important one.

4. The Deputy Commissioner now wishes you to implement as promptly as possible, all the points raised in paras. 2 and 4 of Appendix "A".

20 5. If Insp. Kanda Singh objects to the recording of further evidence by you as Adjudicating Officer, his attention should be drawn to Regulation 4(7A) Police Regulations 1952 - L.N.313/54.

(Sgd.) D. W. Yates
Sr. Assistant Commissioner
C.I.D. Headquarters
for Commissioner of Police.

Appendix "A"

DCP.

30 I have read through the Notes of Evidence with care and in my view there is ample evidence to justify a conviction against Insp.Kanda Singh on these charges. C.P.O. Penang has directed his attention to the fact that Insp. Ng D/S 356 and the informers Eng and Ah Huat are self-confessed perjurers, but notwithstanding this fact he has accepted their present evidence as true which he is entitled to do. The Commissioner's Board of Enquiry formed the same opinion. Mr. Chin apparently told another lie in the defaulter proceedings which is somewhat disappointing after
40 the warning I gave him at the Board of Enquiry. However this was on a minor point and does not affect the main issue.

Plaintiff's
Exhibits

A365-A367

Letter from
Commissioner
of Police to
C.P.O. Penang
and enclosure
5th June 1958
continued

Plaintiff's
Exhibits

A365-A367

Letter from
Commissioner
of Police to
C.P.O. Penang
and enclosure
5th June 1958
continued

2. There are certain points which I consider require rectification before CPO Penang's findings and recommendations are submitted to the Commissioner for confirmation :-

- (a) The Charge. There is a clerical error in line 10 of the original charge "Sec.1 of the Police Ordinance 1952" - should read "Sec.45(1) of the Police Ordinance 1952".
- (b) The alterations to the alternative charge in red ink, made, I think in the CPO's handwriting, should be initialled by him. This is not important as accused was not convicted on this charge. 10
- (c) Finding. I think the CPO should make it clear on the Defaulter Report (Pol 9A) that he has found accused guilty on the original as opposed to the alternative charge. He has made this clear in his covering letter, but I think it would be better if this also appeared on the Pol 9A (4/58). 20
- (d) Exhibits. I am not happy about the exhibits. In my view the investigation diaries marked by the Board of Enquiry DE2 (D/S 356), DE5 and DE6 (Insp. Ng) should have been marked as exhibits. These diaries are referred to in the notes of evidence and copies initialled by CPO., are enclosed in the defaulter report file, but they are not included in the exhibits listed on the Pol.9A, although they are included in CPO's covering letter. I consider that the originals at present in the Board of Enquiry file, should be marked as exhibits and listed on the Pol 9A. Apart from the general statement in para 5(q) of CPO's covering letter dated 23rd May 1958 there is nothing to indicate that these documentary exhibits were shown to the accused although I am sure that this was done. It would have been better if the originals in the Board of Enquiry file had been marked by the CPO as exhibits shown to the accused. 30 40
- (e) In my opinion the original statements of the Informers Ah Huat and Eng (DE3 and DE4) in the Board of Enquiry file, which are now alleged to be false, should be produced and

marked as exhibits relevant to the fourth particular of the original charge.

Plaintiff's
Exhibits

A365-A367

(f) Witnesses. The first accused Loh Meow Kooi and the second accused Ang Keng Cheow should be called, if they are still available, otherwise the presumption will be that their evidence is unfavourable as far as the case against Insp. Kanda Singh is concerned - which, of course, it is not. Their statements should also be put in as exhibits.

Letter from
Commissioner
of Police to
C.P.O. Penang
and enclosure
5th June 1958
continued

3. With regard to the second charge (disobedience of orders), I am inclined to agree with the accused's contention (see para. 3 of CPO's letter (SR) 133/4/8 dated 23rd May 1958) that this charge is redundant in view of the proviso in sec.3(2) Police Regulations 1952. Otherwise there is ample evidence to justify a conviction on this charge.

4. I should now like to comment on the printed Police Defaulter Report Form (Pol 9A). I think the final paragraph should include the statement that all exhibits have been shown to accused.

(Sgd.) D. W. Yates.

SAC/D 3.6.58

EXHIBIT A368 - LETTER FROM C.P.O. PENANG TO COM-
MISSIONER OF POLICE

A368

(SR) 133/4/8.

CONTINGENT POLICE HEADQUARTERS
PENANG.
14th June 1958

Letter from
C.P.O. Penang
to Commissioner
of Police
14th June 1958

Commissioner of Police,
(SAC/D)
Kuala Lumpur.

Sub: Penang Defaulter Reports 4 & 5/58
Ref: Yr. (SR)133/4/8 dated 5th June 1958

I now return the file containing the Defaulter Reports, copy No. 1 of the Board of Enquiry and George Town I. P. No. 1025/57.

Plaintiff's
Exhibits

A368

Letter from
C.P.O. Penang
to Commissioner
of Police
14th June 1958
continued

2. The statements of witnesses Loh Meow Kooi
and Ang Keng Cheow are enclosed as A10 and A11.

3. I have re-written the Pol.9A and the complete
exhibits as in your Appendix A have been produced
and are included therein.

(Sgd.) H. W. STRATHAIRN
f. CHIEF POLICE OFFICER PENANG.
AOD

C.C. File (SR) 1/1547.

A377

EXHIBIT A377 - SUMMING UP BY ADJUDICATING
OFFICER

10

Summing-up by
Adjudicating
Officer
10th May 1958

10th May 1958

Accused marched in by D.S.P. Ibrahim and
informed by me that I had heard his evidence. He
is asked if he wishes to cross-examine any wit-
nesses, in particular Insp. Ng Hong Fuan in his
two diaries. He does not wish to do so.

Accused informed that I realize that certain
witnesses have committed perjury in court and
that some witnesses in this D/R are considered to
have given unsatisfactory evidence. Nevertheless,
I rely upon certain facts which stand out clearly
and that the original charge is proved and accor-
dingly I find him guilty.

20

Accused asked if he has any statement which
he wishes to make and says.

I am innocent of this. I have conscientiously
carried out my duties to the best of my ability and
my record itself shows that I was performing the
duties of 3 Officers and was considered by my
superiors as an officer of high integrity and in
fact was recommended for promotion to Gazetted
Rank. I have nothing else to say.

30

Sd: H.W. Strathairn
Chief Police Officer,
PENANG.

DEFENDANT'S EXHIBITS

EXHIBIT P 18 - LETTER FROM C. of P. to C.P.O.
PENANG AND ENCLOSURE

Defendant's
Exhibits

P 18

(SR) 133/4/8

POLICE HEADQUARTERS
 FEDERATION OF MALAYA
 KUALA LUMPUR

12th March, 1958.

Letter from
 Commissioner of
 Police to
 C.P.O. Penang
 and enclosure
 12th March 1958

H.W. Strathairn Esq.,
 Chief Police Officer,
 Penang.

10

Board of Enquiry relating to Penang
High Court Criminal Trial 11/1957

The Deputy Commissioner wishes you personally to act as adjudicating officer in a defaulter case against Insp. KANDA SINGH, arising out of the report of the above Board of Enquiry.

20

2. I attach a specimen charge which I have drafted after consultation with the Deputy Commissioner and A.C. Personnel. This charge is, of course, merely a guide and you may amend it at your discretion; in any event the Deputy Commissioner would like you to discuss the charge with the DPP before you hear the case and, in particular, to obtain his advice whether all six items in the Schedule should be included, or only certain selected items.

3. If any item in the Schedule is not supported by the evidence called, that item may be amended, altered or struck out at any time before the finding under Reg. 3(4) Police Regs. 1952.

30

4. When Insp. KANDA is departmentally charged, Mr. SYKES must also be called as a witness to support his statement during the Board of Enquiry that he never gave Insp. KANDA SINGH permission to instruct certain witnesses to make false statements, as Insp. KANDA is alleged to have told those witnesses.

5. Mr. TAN CHIN TEIK, DSP, should also be called as a witness as his evidence is extremely relevant in any charge directed against Insp. KANDA, especially with regard to item 2 in the Schedule.

40

6. There may be other witnesses whom you may wish to call during this Orderly Room case and this must

Defendant's
Exhibits

P 18

Letter from
Commissioner of
Police to
C.P.O. Penang
and enclosure
12th March 1958
continued

be left necessarily to your own discretion.

7. This will form the primary charge against Insp. KANDA SINGH. There is a secondary charge for "Wilful Disobedience of Orders" under Section 2(a)(8) Police Regs. 1952 under Police Ordinance 14/52, when Insp. KANDA neglected to carry out Mr. TAN'S instructions to subpoena Insp. TEOH EE SAN and certain other witnesses before the hearing in the Sessions Court (i.e. before a decision had been taken to hold a preliminary enquiry). Para. 24 on page 6 of the Summary of Facts by the Board of Enquiry refers, and also the attendant statements of witnesses.

10

8. I return the original copy of the Board of Enquiry papers for your guidance. It will, of course, be necessary for you to record afresh the statements of all witnesses who attend the departmental enquiry, but you may refer to the evidence already given by such witnesses at the Board of Enquiry itself.

20

sd. D.W. YATES

Senior Assistant Commissioner,
C.I.D. Headquarters,
for COMMISSIONER OF POLICE.

CHARGE

That you did behave in a manner which is likely to bring discredit on the reputation of the Force in that you, at Penang, between 29 May 1957 and 10 July 1957, whilst performing your duties as a Police Inspector in preparing Georgetown investigation paper 1025/57, did suggest to certain witnesses that they should make statements which you knew to be false, as stated in the following Schedule :-

30

Schedule

(1) You did suggest to Insp. NG HONG FUAN, in July 1957, that he should leave out all reference in his investigation diary to the presence of ONG HUAN ENG and Det/Sgt. 647 KHOO CHENG HOE at meetings at the Sepoy Lines, when you knew that they had been present at such meetings.

40

(2) You did suggest to Insp. NG HONG FUAN, in July

1957, that he should state in his investigation diary that he introduced Det/Sgt. 356 LO THEAN GUAN to KOE AH HUAT at the Sepoy Lines on 25 May 1957, when you knew that this introduction was made by Insp. TEOH EE SAN.

Letter from
Commissioner of
Police to
C.P.O. Penang
and enclosure
12th March 1958
continued

- 10 (3) You did suggest to Det/Sgt. 356 LO THEAN GUAN, in June 1957, that he should state in his investigation diary that the 1st accused LOH MEOW KOOI carried the bundle of forged lottery tickets into the room at the White House Hotel on 29 May 1957, when you knew that the bundle of forged lottery tickets was carried into this room by KOE AH HUAT.
- 20 (4) You did suggest to ONG HUAN ENG in June 1957, when recording his statement, that he should state that, on 29 May 1957, he saw the second accused ANG KENG CHEOW hand the bundle of forged lottery tickets to the first accused LOH MEOW KOOI, when you knew that LOH MEOW KOOI had gone into the HOOI LAI Association to obtain the tickets and that ONG HUAN ENG had not seen ANG KENG CHEOW on that occasion.
- 30 (5) You did suggest to KOE AH HUAT, in June 1957, when recording his statement, that he should state that, on 29th May 1957, he saw the second accused ANG KENG CHEOW hand the bundle of lottery tickets to the first accused LOH MEOW KOOI, when you knew that LOH MEOW KOOI had gone into the HOOI LAI Association to obtain the tickets and that KOE AH HUAT had not seen ANG KENG CHEOW on that occasion.
- (6) You did suggest to KOE AH HUAT in June 1957, when recording his statement, that he should state that first accused LOH MEOW KOOI carried the bundle of forged lottery tickets into the room at the White House Hotel, on 29 May 1957, when you knew that the bundle of forged lottery tickets was carried into this room by KOE AH HUAT.
- 40 An offence under Regulation 2 (a) (13) of the Police Regulations 1952; punishable under Sec. 45(1) of the Police Ordinance, 1952.
-

Defendant's
Exhibits

LETTER FROM JAG-JIT SINGH ESQ. TO L.A.
MASSIE ESQ.

Letter from
Jag-Jit Singh
Esq. to L.A.
Massie Esq.
14th December
1959

JAG JIT SINGH
Advocate & Solicitor

P.O. Box 167,
25 Light Street,
Penang.

My Ref: JJS/AD/115/59/123.

14th December 1959.

L.A. Massie Esq.,
Senior Federal Counsel,
Legal Adviser's Chambers,
Penang.

10

Dear Sir,

Penang High Court Civil Suit No.232/59
B. Surinder Singh Kanda

VS

The Government of the Federation of Malaya

I refer you to our telephone conversation this morning and to my subsequent visit to your Chambers for the purpose of inspecting the letter of the 12th March, 1958, which Mr. Strathairn told the Court, the other day, he had received from the Deputy Commissioner of Police.

20

2. On reaching your Chambers you very kindly gave me a copy of this letter together with a copy of the charge and allowed me and the Plaintiff to compare it with the original. I am indeed very grateful to you for your assistance in the matter and thank you for what you have done.

3. I note upon reading the letter that it has been written by Mr. D.W. Yates, for the Commissioner of Police, and on the instructions of the Deputy Commissioner.

30

4. The letter discloses an alarming state of Affairs on which I reserve my comments. But I would like to say at this juncture that Mr. Strathairn was given implied instructions to 'damn' the Plaintiff. The instructions given to Mr. Strathairn were to "record afresh the statements of all witnesses who attended the Departmental Enquiry." He was further told that he may refer to the evidence already given by such witnesses at the Board of Enquiry itself.

40

Defendant's
Exhibits

5. On going through the Board of Enquiry findings you will find that the Plaintiff had already been condemned at that stage. The Complete Record of the Board of Enquiry and especially the findings made therein were at no time given to the Plaintiff.

Letter from
Jag-Jit Singh
Esq. to L.A.
Massie Esq.
14th December
1959
continued

10 6. I am at the moment considering whether I should recall any witnesses on these matters, but I cannot make up my mind as yet. At the moment I think the letter in question is self explanatory. However, I sincerely hope that it will not be necessary for me to call any witnesses.

7. I am sending a copy of this letter together with a copy of Mr. Yates' letter to Mr. Strathairn, to the Senior Assistant Registrar so that his Lordship may be kept informed of these new matters.

Yours faithfully,
Sd: Jag Jit Singh.

c.c.

20 The Senior Assistant Registrar,
Supreme Court,
Penang.

BOARD OF INQUIRY - (a) CONVENING ORDER
AND TERMS OF REFERENCE

TERMS OF REFERENCE OF THE
BOARD OF ENQUIRY

Extracts from
the Board of
Enquiry
(a) Convening
Order and
Terms of
Reference

30 In relation to the subject matter of Penang (Georgetown) Investigation Paper No. 1025/57 (Penang High Court Criminal Trial 11/1957) the Board of Enquiry is appointed to enquire into the circumstances which led to one officer of the Police Force being charged with perjury as a result of the facts which he had used in the Court cases connected with that Investigation paper.

2. The Board shall consist of a President Mr. D.W. Yates SAC 'D' and two members, Mr. J.R. Lawrence, Deputy CPO Penang and Mr. Thoo Yam, Ag. Superintendent Special Branch. The Board is empowered to call before it and record the evidence

Defendant's
Exhibits

Extracts from
the Board of
Enquiry
(a) Convening
Order and
Terms of
Reference
continued

of any member of the Police Force who in their opinion has information or evidence relevant to the point at issue.

3. But in the terms of reference :-

- (i) to determine the methods of control and supervision of the investigation in Penang (Georgetown) I/P 1025/57;
- (ii) to examine the reasons put forward by Penang Special Branch, to ensure security of the original informants and to assess the necessity or otherwise for such action; 10
- (iii) to determine whether all information available to Special Branch officers was made available to the investigating officers, C.I.D., when assessing what evidence would be produced in Court;
- (iv) to determine the degree of supervision over the work of the Investigating Officer by OCCI Penang, or any assistant of his, during the course of the Investigation; 20
- (v) to examine the manner in which the evidence to be adduced at the trials was presented to the D.P.P. prior to hearing of the case;
- (vi) to determine whether the alleged criminal act or any other criminal acts arising from the presentation of evidence in this case was due to lack of supervision, lack of liaison or withholding of evidence by either S.B. or C.I.D. Penang.

CONFIDENTIAL

(b) Summary
of Facts
(Part I)

BOARD OF INQUIRY - (b) SUMMARY OF FACTS
(PART I)

BOARD OF ENQUIRY
PART I
SUMMARY OF FACTS

INTRODUCTION

The facts of the case are somewhat involved

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Defendant's
Exhibits

as no fewer than eight IPs/PEPs are concerned, excluding one which was missing and was produced before the Board by Insp. KANDA. For the sake of simplicity, the principal witnesses - apart from Police personnel - are referred to as follows:-

Source	ONG HUAN ENG	-	ENG
Sub-Source	KOE AH HUAT	-	AH HUAT
1st Accd.	LOH MEOU KOOI	-	LOH
2nd Accd.	ANG KENG CHEOW	-	ANG

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

10 2. It should be noted that, although in the I/P and in Court ENG was referred to as source and AH HUAT as sub-source - apparently in deference to Special Branch susceptibilities - in fact ENG was a casual informer, reporting criminal information to SB officers, and AH HUAT was a friend of ENG and had never himself given information to the Police. ENG is a doubtful character, with two previous convictions, and there was an allegation
20 that some years ago he had absconded with \$2,000/- given to him by a former OCCI in connection with a trap, some of which money he had later refunded.

3. Part I is a summary of the facts as they appeared to the Board; but it will be appreciated that there are discrepancies, partly due to the fact that the events referred to occurred over six months ago and were not fresh in the memories of the witnesses, and partly due to the fact that not all the witnesses were speaking the truth.

SUMMARY OF FACTS.

30 4. On 23 April 57, Mr. CHIN, ASP of SB and DS 647 CHENG HOE met source ENG at a hotel and were introduced to a man named LIM KIM CHOOI, who wished to make a complaint of attempted extortion against an ex SB Inspector and two members of the SOVF. A further meeting with KIM CHOOI was arranged for the following morning at the Sepoy Lines, near the General Hospital, in order that a confidential report could be recorded from KIM CHOOI.

40 5. On the following morning, 24 April, sub-source AH HUAT gave source ENG a forged Social Welfare lottery ticket which he had obtained from 1st accd. LOH. These forged tickets were said to be on sale for \$35/- a hundred and AH HUAT desired ENG to find a purchaser - any amount obtained in excess

Defendant's
Exhibits

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

of \$35/- a hundred representing their profit. It is not clear whether it was then and there agreed to pass this information on to the Police, but at any rate later the same morning ENG contacted Mr. CHIN at the General Hospital, where he was waiting to meet KIM CHOOI about the extortion case, and gave him the ticket. Whether or not this meeting between ENG and Mr. CHIN at the General Hospital was a chance meeting will be considered later. Mr. CHIN gave ENG \$35/- out of his own pocket and asked him to obtain 100 tickets. Later, KIM CHOOI arrived and a confidential report about the extortion case was recorded. Subsequently, ENG obtained 100 tickets from AH HUAT (who got them from 1st accd. LOH) and the same evening, at the Sin Chew Hotel, ENG handed these tickets to DS 657 who was representing Mr. CHIN. When the forged tickets were counted, it was found that there were only 90. The following morning (25 April), Mr. CHIN saw Mr. TAN (then ASP) of CID., and the forged tickets were handed to OCCI who gave Mr. CHIN \$50/- from Secret Service, \$35/- to re-imburse himself and \$15/- for ENG. OCCI was told that further enquiries were being made by SB and that as soon as the details had been tied up, the case would be handed over to CID. 10 20

6. On 12 May, both Mr. CHIN and Mr. TAN went on a course to KKB. Mr. CHIN handed over his duties to Insp. NG. The latter was told that Mr. CHIN was in contact with ENG, through DS 647, and had obtained the 90 forged tickets from him. If ENG had any information he would pass it to Insp. NG through DS 647. If Insp. NG received any further information about the lottery tickets he was to pass that information to Mr. GURGHARAN SINGH (then Ag. ASP) of CID. 30

7. On 23 (or 24) May, ENG took Insp. NG to AH HUAT's house and introduced AH HUAT as his friend who was in contact with the seller of the forged lottery tickets. According to AH HUAT, it was only then that he realised that ENG had informed the Police and that it was proposed to set a trap. However, he trusted ENG and was apparently not annoyed that, instead of finding a purchaser, he had informed the Police. ENG asked AH HUAT to make all arrangements with the Police about the trap, because he wanted to keep out of it as much as possible. 40

Defendant's
Exhibits

8. After this meeting, SB approached CID to arrange for a detective to pose as the purchaser in the trap which was to be set. On 25 May, Insp. KANDA told OCCI that the forged lottery ticket case had come up again and SB wanted a CID detective to act as purchaser. It was hoped to buy 3,200 tickets and \$1,500 was required. OCCI suggested DS LO as he had acted in a similar capacity previously. As far as OCCI can remember, Insp. KANDA himself volunteered to take over the investigation and he agreed, because Insp. KANDA was O.C. Specialist Crime. He gave Insp. KANDA \$500/- which was as much as he was prepared to risk on this venture, and the latter suggested using a further \$1,000/- in forged notes, which - unknown to OCCI - Insp. KANDA had in his possession. The use of these forged notes will be the subject of later comment. Insp. KANDA claims that it was Mr. GURCHARAN SINGH who instructed him to take over the investigation, but this is denied by Mr. GURCHARAN SINGH.

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

9. Another meeting was arranged with ENG and AH HUAT at the Sepoy Lines on 25 May in order to introduce the 'purchaser' DS LO to AH HUAT. Insp. NG, however, was unable to attend this meeting because he was unwell, and he asked Insp. TEOH of SB to represent him. Insp. TEOH saw Insp. KANDA and took DS LO to the Sepoy Lines in his car. DS 647 introduced AH HUAT to Insp. TEOH who in turn introduced him to DS LO. AH HUAT then discussed arrangements for the trap with DS LO. ENG was also present at this meeting, but stayed in the background and was not introduced.

10. A further meeting, this time attended by Insp. NG, was held at the Sepoy Lines the following day, 26 May, ENG, AH HUAT, DS LO and other detectives were also present, but again ENG kept in the background and did not take part in the discussions.

11. The first trap was arranged at a coffee shop at 64 Kimberley St. at 1 p.m. on 26 May. This trap was unsuccessful because 1st accd. LOH did not bring the tickets with him and wanted AH HUAT to go and fetch them. Insp. KANDA was concealed in a hotel, overlooking the coffee shop.

12. Insp. KANDA informed OCCI that another trap was to be laid at the White House Hotel at 9 p.m. on 29 May. DS LO would be waiting in a room at

Defendant's
Exhibits

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

the hotel with the money, and Insp. KANDA would be in an adjacent room. This trap was successful.

13. ENG obtained a self-drive car and at 8 p.m. on 29 May met AH HUAT and 1st accd. LOH outside the Hooi Lai Association. 1st accd. LOH went into the association and came out with a bundle. All three drove off in the car, arriving at the White House Hotel at 9 p.m. AH HUAT led the way up the stairs, carrying the bundle at the request of 1st accd. LOH. ENG followed behind, having parked the car. All three went into the room where DS LO was waiting, AH HUAT still carrying the bundle. DS LO was introduced as the purchaser, AH BAH of Kangar. After being introduced to DS LO, ENG left. DS LO opened the bundle which contained eight packages of lottery tickets. He then called for beer, which was the signal for Insp. KANDA and a detective, who were waiting in a room opposite, to come in and arrest 1st accd. LOH and AH HUAT. The latter was arrested by arrangement because it was hoped that he would be able to obtain more information about the source of the lottery tickets from 1st accd. LOH. The lottery tickets and the \$1,500/- were seized as exhibits. (Actually, only \$1020 in genuine and forged notes were produced in Court and this is the subject of later comment by the Board). 10 20

14. At 11.30 p.m. Insp. KANDA phoned OCCI and reported the success of the trap. OCCI came to Police H.Q. where he saw Mr. GURCHARAN SINGH, Insp. KANDA, DS LO and 1st accd. LOH. At first, accd. LOH would not talk. However, DS LO claims that he admitted to him that he had obtained the tickets from a man called ANG, (2nd accd.) and that he was meeting ANG at 64 Kimberley St. at 9 a.m. the following morning to hand over the money obtained for the tickets. OCCI left CID HQ., where they had adjourned, at 1 a.m. under the impression that accd. was still not talking. Insp. KANDA claims to have recorded a statement from accd. at 11.45 p.m. that night in which he admitted that he had obtained the bundle of tickets from end accd. ANG in front of the Hooi Lai Association at 8 p.m. that evening and that he had arranged to meet him at 9 a.m. the following morning. However, there is reason to believe that this statement (the original is D5 in G.T. I/P 1946/57 and is now marked Documentary Exhibit 1) 30 40

sic

Defendant's
Exhibits

was written up by Insp. KANDA at some later date. PC 26400, who is recorded as the interpreter, states that no statement was taken down in writing while he was interrogating the accd. and that he could get no information out of the accd.

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

10 15. At 8.30 a.m. the following morning (30 May), OCCI was informed by Insp. KANDA that 1st accd. LOH had admitted that 2nd accd. ANG was involved, and that he was meeting ANG in Kimberley St. at 9 a.m. that morning to hand over the money. 1st accd. LOH had agreed to assist in laying a trap for ANG. OCCI instructed Insp. KANDA to lay a trap for ANG, using DS LO and 1st accd. LOH.

16. The trap was laid and 2nd accd. ANG arrived on a bicycle. 1st accd. LOH called him in to the coffee shop and DS LO asked him if he had any more lottery tickets for sale. ANG replied in the affirmative, and DS LO gave a signal to Insp. MOISSINAC who arrested ANG.

20 17. When 2nd accd. ANG was brought to the police station, he was questioned by OCCI, but would not admit anything. Later, however, Insp. KANDA reported to OCCI that ANG had told DS LO that he had obtained the tickets from a man named TAN who lived at 99 Klang Road, Kuala Lumpur. ANG was prepared to assist the police in tracing TAN. OCCI reported to CPO and it was agreed that Insp. KANDA should proceed to K.L. with DS LO and ANG to look for TAN, and that OCCI should telephone SAC/D to ask for assistance. Insp. KANDA, DS LO and 30 ANG left for Kuala Lumpur in Insp. KANDA's car that evening. The following day, after reporting to CID Selangor, DS LO and ANG went off to look for TAN, but were unable to locate the address. ANG turned hostile and refused to help. It was, therefore, decided to return to Penang, Insp. KANDA - according to DS LO - cursing and swearing at ANG in Malay. At 5.30 p.m. on 1 June Insp. KANDA reported his return to OCCI. He said that OCCI Selangor 40 was carrying out further enquiries for TAN. He was disappointed, but did not appear to be particularly annoyed with ANG. It was decided to obtain a warrant for ANG's arrest and to charge him in Court.

18. At 12 noon on 2 June, Insp. NG alleges that - on the instructions of Insp. KANDA - he brought the informers ENG and AH HUAT to Insp. KANDA's flat at

Defendant's
Exhibits

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

Police H.Q. It was a Sunday and Insp. KANDA was in bed, apparently sick. He spoke about the abortive trip to Kuala Lumpur and appeared to be very angry with 2nd accd. ANG. He said something about 'fixing' ANG and that when he was better, he would call ENG and AH HUAT to his office and would teach them what to say. Insp. KANDA denies that this meeting ever took place.

19. Shortly after the return from Kuala Lumpur, DS LO submitted his investigation diary to Insp. KANDA. Two or three days later, he alleges Insp. KANDA sent for him and told him to put up another diary, leaving out all reference to Insp. TEOH, who had attended the meeting at the Sepoy Lines on 25 May in place of Insp. NG. He was also told to say that all arrangements for the trap had been made by Insp. NG, AH HUAT and himself and not to mention anyone else. Insp. KANDA also told him to say that it was 1st accd. LOH who carried the bundle of lottery tickets into the room at the White House Hotel and not AH HUAT. DS LO identifies the diary marked C2 in G.T. I/P 1025/57 (now marked D.E 2) as the false diary which he put up on the instructions of Insp. KANDA. The original I/D cannot be traced.

20. About 10 days after the meeting in Insp. KANDA'S bedroom, the informers ENG and AH HUAT state that they were called to Insp. KANDA'S office to have their statements recorded. They both allege that Insp. KANDA told them to say that they had seen 2nd accd. ANG give the bundle of lottery tickets to 1st accd. LOH outside the Hooi Lai Association at 8 p.m. on 29 May. This was not true. 1st accd. LOH had gone into the association to get the tickets. When AH HUAT asked how he could identify 2nd accd. ANG when he had never seen him, Insp. KANDA is alleged to have replied that there would be only two accd. in Court, and they both knew the 1st accd. Insp. KANDA is also alleged to have told AH HUAT to say that he carried the bundle upstairs at 1st accd's request and gave it to 1st accd. when they went into the room. There are discrepancies in the evidence of AH HUAT and ENG about the recording of their statements. The original statements were produced to the Board by Insp. KANDA and are marked DE 3 and DE 4. AH HUAT's statement purports to have been recorded on 4 June and ENG's on 13 June.

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Defendant's
Exhibits

10 21. At the beginning of July, Insp. NG gave Insp. KANDA two copies of his diary, retaining a third copy. About two days later, Insp. NG alleges that Insp. KANDA told him his diary was no good, and asked him to put up a fresh one, leaving out all reference to the informer ENG, DS 647 and Insp. TEOH. Insp. NG claims that he objected but was told that it was the boss's instructions. Insp. NG typed out a new diary, two copies of which he gave to Insp. KANDA, again retaining a third copy. He destroyed the third copy of his first diary. Insp. NG identifies D5 and D6 in G.T. I/P 1945/57 as the original and a carbon copy of his first diary and D7 as the third copy of his second I/D which he gave to OCCI after the case in the High Court. The original copy of the first diary is marked DE 5 and the carbon copy of the second diary DE 6.

Extracts from
the Board of
Enquiry:-
(b) Summary
of Facts
(Part I)
continued

20 22. Between 10 and 13 July, Insp. KANDA brought G.T. I/P 1025/57 to OCCI. There is a minute in the I/P by Insp. KANDA to OCCI dated 10 July, but according to OCCI's official diary he saw DPP about this case on 13 July. As far as he can remember, Insp. KANDA was with him and they discussed the I/P with DPP. Insp. KANDA denies that he was present at this meeting. At any rate, DPP glanced through the I/P and instructed OCCI to proceed against the two accd. in the Sessions Court, and OCCI minuted the I/P accordingly to
30 Insp. KANDA on 13 July. OCCI admits that he did not at any time before the fiasco in the High Court read through the I/P. He regarded it as a simple, straightforward case which Insp. KANDA was well able to handle.

40 23. Mr. TAN, ASP, was instructed to prosecute the case in the Sessions Court. He received the I/P on 15 July. He described it as one of the most slipshod I/Ps he had ever seen, containing only a few statements and 3/4 diaries. He gave it back to Insp. KANDA the following morning, telling him what he thought of it and instructing him to record further statements. He received the I/P back on 17 July, shortly before the case was due to be heard in the Sessions Court. His instructions had not been carried out. The case was postponed to 24 July. He gave the I/P back to Insp. KANDA, making him write down what additional statements were required. The same day he reported Insp. KANDA's slackness to OCCI. He did

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Extracts from
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(b) Summary
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(Part I)
continued

not receive the I/P back until the evening of 23 July. It was still unsatisfactory and he rang up Insp. KANDA and asked him to come round to his quarters to discuss the case. Insp. KANDA declined on the grounds that he had an important social engagement - a visit to an Indian warship. Insp. KANDA denies that Mr. TAN rang him up, claiming that he was in Court until 8 p.m.

24. The following day (24 July), before the hearing in the Sessions Court, Mr. TAN spoke to Insp. NG and DS LO about their evidence. Insp. NG mentioned that Insp. KANDA had instructed him to say something which was not true, namely that he and not Insp. TEOH was present at the meeting at Sepoy Lines on 25 May. Mr. TAN sent for Insp. KANDA and asked why he had told Insp. NG to give false evidence. Insp. KANDA is alleged to have replied 'to cut short, Sir, on the OCCI's instructions'. Mr. TAN instructed Insp. KANDA to subpoena Insp. TEOH and certain other witnesses. When Mr. TAN left, Insp. KANDA is alleged to have told Insp. NG and DS LO to stick to their second diaries which had been seen by OCCI and DPP as it would complicate things if they changed their stories. In fact, Insp. TEOH was never called as a witness in Court.

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25. The hearing was started in the Sessions Court, but it was then decided to hear the case in the High Court and the preliminary enquiry was fixed for 26 July. Mr. TAN gave the I/P back to Insp. KANDA, saying that the postponement would give him time to clear up the mess.

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26. At this time, there was a PEP (G.T.73/57) attached to the I/P, although neither Mr. TAN nor the OCCI remember this. The PEP had originally been opened on 2nd accd. ANG. Mr. TAN minuted on the PEP to the OCCI, but made no mention of his dissatisfaction with Insp. KANDA. This minute is undated. The PEP was later detached from the I/P and was not made available to the Board until Insp. KANDA produced it at the Enquiry on request.

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27. On the same day (24 July), Mr. TAN complained again to OCCI about Insp. KANDA's slackness; and suggested he should be defaulted. However, he appears to have made no mention of the suppression of evidence in respect of Insp. TEOH. According to Mr. TAN, OCCI was not keen on defaulting Insp.

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KANDA, as it was partly his own fault for trusting Insp. KANDA too much and allowing him to brief him on the I/P. OCCI states that he said that it would be inadvisable to put Insp. KANDA on a departmental charge until the case was finished.

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(b) Summary
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continued

10 28. OCCI saw DPP about the case on 24 July at 5 p.m. and again at 9.30 a.m. on 25th July. The DPP apparently agreed to the charge against 2nd accd. ANG being amended, but there is no record of these meetings with DPP on the I/P.

20 29. Mr. TAN was unable to lead the evidence at the preliminary enquiry, because he was engaged in the Sessions Court at Butterworth on 26 July. When OCCI and Mr. TAN were discussing the case on 24 July, it was agreed that Insp. SYED JALALUDIN would be able to conduct the preliminary enquiry. Mr. TAN had already discussed the case with Insp. JALALUDIN and had warned him that the I/P had been badly put up by Insp. KANDA. Mr. TAN saw Insp. JALALUDIN on 25 July and asked him if he had received the I/P. He replied in the negative and Mr. TAN told him to get hold of Insp. KANDA and see OCCI. Insp. JALALUDIN states that he eventually received the I/P at 6.30 p.m. on 25 July from OCCI and was told to study it and report to him if he was in any difficulty. OCCI does not remember handing the I/P to Insp. JALALUDIN. Insp. KANDA discussed the I/P with Insp. JALALUDIN for about 10 minutes; the latter then took the I/P home and sat up most of the night studying it. Insp. KANDA claims that he had prepared a 5 page typed summary of the evidence for Insp. JALALUDIN, but the latter states that this was not in the I/P when he received it and that he has never seen it before. It is signed by Insp. KANDA but is undated. At this stage, PEP 73/57 was detached by Insp. KANDA and retained by him.

40 30. Insp. JALALUDIN was apparently satisfied with the I/P and the case proceeded without hitch in the Lower Court. Hearing was continued on 29 July and finished on 7 August when both accused were committed for trial. Mr. CHIN, Insp. NG, DS LO, ENG and AH HUAT all gave false evidence, but Insp. JALALUDIN had no reason to suppose that their evidence was false. Mr. TAN had not told him that Insp. TEOH and not Insp. NG was present at the Sepoy Lines meeting on 25 May. Insp. JALALUDIN is positive that he examined Insp. NG on his second

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(b) Summary
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(Part I)
continued

diary (DE 6) and that he has never seen the original diary (DE 5) on which the Judge cross examined Insp. NG in the High Court. On 7 August Insp. JALALUDIN handed the I/P back to Insp. KANDA, on conclusion of the enquiry, because Insp. KANDA wished to re-arrange it before forwarding it to OCCI. Insp. JALALUDIN did not minute on the I/P, but Insp. KANDA made an undated note to the effect that both accused had been committed for trial.

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31. The I/P was in Insp. KANDA's possession until 4 Sept. when he minuted it to DPP who had called for it for the Assizes.

32. The trial took place in the High Court on 18 and 19 September. The Judge found that Mr. CHIN and Insp. NG had given false evidence and acquitted and discharged both accd. He called for the I/P and cross examined Insp. NG on this original I/D (DE 5)* which, by some unexplained means, had found its way onto the I/P in place of the second diary (DE 6) on which Insp. NG had given evidence in the Lower Court.

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33. Mr. CHIN is alleged to have given false evidence by stating that the meeting with the informer ENG at the General Hospital, on 24 April, when the first lottery ticket was handed over, was a chance meeting. DS 647 had stated that he had received a message from ENG that morning asking him to meet him at Sepoy Lines and that he had reported this to Mr. CHIN and had proceeded there with him.

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34. Insp. NG stated falsely in the High Court:-

(i) that neither ENG nor AH HUAT knew that the other was acting in co-operation with the Police.

(ii) that ENG did not know that a trap was being set.

(iii) that the words 'source ENG' in his official Police diary did not refer to the witness ENG but to another informer.

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* See copy of Notes of Evidence in High Court - D3A, D3 and D4 in G.T. I/P 1945/57 now marked DE 7.

(iv) that at the meetings at Sepoy Lines AH HUAT was alone.

(v) that he was present at the Sepoy Lines meeting on 25 May when in fact he was sick and Insp. TEOH was acting for him. (Note. This falsehood was not found out by the Judge).

Extracts from
the Board of
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(b) Summary
of Facts
(Part I)
continued

DS LO, ENG and AH HUAT also committed perjury.

10 35. At 4.30 p.m. on 19 Sept. DPP sent for OCCI and told him that police witnesses, including police officers, had given false evidence. On 24 September DPP minuted the I/P to OCCI (his only minute in the I/P), instructing him to open investigation papers separately in respect of perjury committed by Insp. NG, ENG, AH HUAT and possibly DS LO. He also instructed that a separate investigation should be set up on the failure of Insp. SYED JALALUDIN to bring out clearly in the depositions the relevant material contained in the statements in the I/P.

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36. On 18 September Mr. GURCHARAN SINGH and Insp. KANDA went to Kuala Lumpur to attend the SPOA Conference. Insp. KANDA had just given evidence in the High Court and was worried because the Judge had taken away his diary. The following morning Insp. KANDA was studying the reports of the case in all the morning papers, and Mr. GURCHARAN SINGH formed the impression that he had done something wrong.

30 37. OCCI, assisted by Mr. KAY KIM SENG, the AOCCI, commenced his investigation. On 28 September Mr. KAY recorded statements from the informers ENG and AH HUAT. These statements disclosed that Insp. KANDA had 'framed' 2nd accd. ANG by instructing ENG and AH HUAT to say that they had seen 2nd accd. ANG hand the bundle of forged lottery tickets to 1st accd. LOH outside the Hooi Lai Association at 8 p.m. on 29 May. He immediately reported to OCCI.

40 38. On 7 November Mr. KAY recorded a statement from Mr. TAN in which the latter severely criticised Insp. KANDA. The following day Insp. KANDA came to see him and said that he knew what Mr. TAN had said about him. He asked Mr. KAY not to believe this because Mr. TAN had a grudge against him. He claimed that Mr. TAN suspected him of working together with Mr. HARRIES, the former OCCI, to get

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 (b) Summary
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 (Part I)
 continued

Mr. TAN into trouble in a corruption case. Mr. KAY immediately reported this conversation to OCCI. Insp. KANDA made similar allegations to OCCI who suspected that he had seen Mr. TAN's statement when it had been passed outside for typing.

39. On 11 November Insp. KANDA wrote to CPO Penang asking for a personal interview because, when he attended a Selection Board in Kuala Lumpur on 7 November, he had been informed that he was 'under a cloud'. He followed this letter up with reminders dated 25 November and 10 December. On 25 December he was informed that CPO would only see him after the Board of Enquiry. (DE 8, 9 and 10).

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40. DS LO states that after the OCCI had started his investigations, Insp. KANDA came to see him in the Secret Societies Branch and asked if he had made a statement about Insp. NG. When he replied in the negative, Insp. KANDA told him not to say that he had received any instructions from him and to stick to what he had said in Court.

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41. On 10 December, Insp. NG was prosecuted on three charges of perjury in the Sessions Court. Two charges were withdrawn, and he pleaded guilty to the third charge on which he was bound over, no conviction being recorded. The two charges were withdrawn because the evidence had been recorded in shorthand by the Judge's Secretary and not in longhand by the Judge.

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42. On 17 December, L.A. Perak (formerly DPP and L.A. Penang) wrote to CPO Penang on the subject of the perjury committed by Mr. CHIN (DE 11). Although Mr. CHIN could not be prosecuted for perjury in Court because the Judge had not recorded his reply in his Notes, the Judge was prepared to make a statement to the Board of Enquiry as to what was said. The Board considered it unnecessary to record statements either from the Judge or the L.A. because both Mr. CHIN and DS 647 admitted what they had been recorded as saying in evidence in Court, although they attempted to explain the discrepancy. The Board comment on this matter in Part II of this report.

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BOARD OF INQUIRY - (c) PARAGRAPHS 65-72
(INCLUSIVE) OF PART II

Defendant's
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PART II

POLICE OFFICERS INVOLVED

Extracts from
the Board of
Enquiry:-
(c) Paragraphs
65 to 72
(inclusive)
of Part II

x
x x

65. Insp. BHAGAT SURINDER SINGH KANDA.

10 The Board are unanimously of opinion that
Insp. KANDA is the 'villain of the piece'. As far
as the false evidence about the meetings at the
Sepoy Lines is concerned, it would appear that
Insp. KANDA's motive was to simplify the case and
to cut short the evidence. However, with regard
to the false evidence of the informers ENG and AH
HUAT about 2nd accd. ANG handing the bundle of
forged tickets to 1st accd. LOH, and the false
evidence of DS LO about 1st accd. LOH bringing the
bundle of tickets into the room at the White House
Hotel, there was no doubt in the minds of the Board
that the motive was dishonestly to strengthen the
case against both accd. in order to ensure a con-
20 viction in Court. It was also apparent that Insp.
KANDA bore a grudge against 2nd accd. ANG because
of the abortive trip to Kuala Lumpur.

30 66. Apart from the false diaries of Insp. NG and
DS LO, it was considered doubtful whether the
statement, alleged to have been recorded by Insp.
KANDA from 1st accd. LOH (D5 in G.T. I/P 1946/57 now
marked DE 1) at 11.45 p.m. on 29 May, which impli-
cated 2nd accd. ANG; was ever actually recorded from
1st accd. P.C. 26400, who is recorded on the state-
ment as the interpreter, denied that any statement
was written down by Insp. KANDA while he was ques-
tioning 1st accd. 1st accd. LOH himself denied
ever making this statement, although he cannot be
regarded as a truthful witness. It was also con-
sidered doubtful whether the original statement of
the informer AH HUAT (DE 3), which was produced by
Insp. KANDA and is unsigned, was recorded on 4 June.
The date appeared to have been added later and it
was noted that the typed copy of this statement
40 on G.T. I/P 1025/57 was undated. AH HUAT claimed
that he had made this statement at the same time
as ENG whose statement was dated 13 June. P.C.13683
KOK TUCK SUN, who is recorded as interpreter, was

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Extracts from
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65 to 72
(inclusive)
of Part II
continued

questioned by D/CPO Penang, but was unable to shed any light on this.

67. The Board accepted as damning evidence against Insp. KANDA the account by Insp. NG, ENG and AH HUAT of the meeting in Insp. KANDA's bedroom on 2 June, which is, of course, denied by Insp. KANDA.

68. The Board considered with great care the possibility that Insp. KANDA was being 'framed' by his brother officers. It was known that, because of the successes he had achieved and of his superior attitude, he was unpopular with other Inspectors. The 'framing' of evidence against 1st accd. LOH and 2nd accd. ANG by DS LO and ENG and AH HUAT was not discovered until the police enquiry started after the High Court trial. If there had been a conspiracy against Insp. KANDA, it would follow that at least ENG, AH HUAT, Insp. NG and DS LO were involved. ENG and AH HUAT are witnesses who are obviously prepared to say anything they are told to say. Insp. NG and DS LO are self confessed perjurers. If Insp. KANDA has been 'framed', it follows that 2nd accd. ANG was present outside the Hooi Lai Association on 29 May. The evidence is against this. 1st accd. LOH denies it and also denies making the statement in which he is alleged to have admitted receiving the tickets from 2nd accd. ANG. In this he is supported by PC 26400 who is alleged by Insp. KANDA to have interpreted the statement. 2nd accd. ANG has produced two witnesses to state that he was at home at the material time - A13 and A14 in G.T. I/P 1944/57 - although their statements were not recorded until 9 October. After careful consideration, and taking into account the demeanour of the witnesses interviewed by them, the Board unhesitatingly rejected the possibility of a conspiracy against Insp. KANDA by his brother officers.

69. The Board also rejected Insp. KANDA's allegation that ASP TAN had a grudge against him. Insp. KANDA claimed that Mr. TAN suspected that he had assisted the former OCCI, Mr. HARRIES, in a corruption investigation, involving Mr. TAN and other police officers. There was such an enquiry involving Mr. TAN, but OCCI stated that it was filed after reference to SAC/D and DCP. The Board noted that this allegation was only made by Insp. KANDA after he had apparently seen Mr. TAN's statement

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about his slackness in preparing the I/P. The Board inspected G.T. I/Ps 1126/55, 1128/55 and 1129-1131/55 and were only able to find two brief references to Mr. TAN in statements by detective sergeants, alleging that Mr. TAN was being paid to ignore character lotteries.

Defendant's
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Extracts from
the Board of
Enquiry:-
(c) Paragraphs
65 to 72
(inclusive)
of Part II
continued

10 70. The Board attached no weight to a further allegation by Insp. KANDA that he had quarrelled with Mr. TAN because, as prosecuting officer, he had criticised a c.b.t. case which Mr. TAN had investigated.

71. Insp. KANDA also produced a letter (DE 12), which he had written to OCCI on 20 June 57, reporting information that certain hotel keepers planned to 'fix' him because of the successful brothel raids which he had carried out, and were prepared to subscribe \$20,000/- to that end. OCCI had no evidence that hotel keepers were trying to get Insp. KANDA into trouble and the Board did not believe it.

20 72. The Board found it difficult to believe that an officer in Inspector KANDA's position, highly regarded by both CPO and OCCI, with a reputation as a successful investigator and believed to be on the verge of promotion, would fabricate evidence against an accused person purely out of spite - the motive for revenge in this case being the 'wild goose chase' to Kuala Lumpur. The Board were forced to the conclusion that Insp. KANDA is a very ambitious and a thoroughly unscrupulous officer who is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods.

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BOARD OF INQUIRY - (d) FINDINGS OF THE
BOARD (PART III)

PART III

FINDINGS OF BOARD ON TERMS OF REFERENCE.

(d) Findings
of the Board
(Part III)

40 (i) TO DETERMINE THE METHODS OF CONTROL
AND SUPERVISION OF THE INVESTIGATION
IN PENANG (GEORGE TOWN) I/P 1025/57.

76. The investigation was left to Insp. KANDA who

Defendant's
Exhibits

Extracts from
the Board of
Enquiry:-
(d) Findings
of the Board
(Part III)
continued

was trusted implicitly by OCCI. Insp. KANDA kept OCCI informed of the progress of the investigation - or of as much of it as he wished. OCCI admits that he did not even read the investigation paper.

(ii) TO EXAMINE THE REASONS PUT FORWARD BY PENANG SPECIAL BRANCH TO ENSURE SECURITY OF THE ORIGINAL INFORMANTS AND TO ASSESS THE NECESSITY OR OTHERWISE FOR SUCH ACTION.

77. The so-called source ENG was in fact a low grade casual informer not on monthly pay. Most - if not all - of his information related to criminal matters. He had two previous convictions which was apparently not known to S.B. - and this was probably why he was reluctant to contact CID officers. SB did not check him against CID records. The so-called sub-source AH HUAT is not a police informer. There appeared to be no reason to afford any more protection to these persons than that normally accorded to police informers. There is no evidence that SB brought any pressure to bear on CID to protect these persons, other than by suggesting that it was inadvisable to call ENG as a witness in Court as he was an informer who might be of further use to the Police. 10

(iii) TO DETERMINE WHETHER ALL INFORMATION AVAILABLE TO SPECIAL BRANCH OFFICERS WAS MADE AVAILABLE TO THE INVESTIGATING OFFICERS CID WHEN ASSESSING WHAT EVIDENCE WOULD BE PRODUCED IN COURT. 30

78. No evidence appears to have been withheld by Special Branch, but it is the opinion of the Board that the investigation of this case should have been taken over by CID as soon as the information disclosed a criminal offence. It should certainly have been taken over by CID when the 90 forged tickets were handed to OCCI on 25 April. It is appreciated that the informer ENG had an excellent reason for not wishing to be handed over to CID, but it is considered that there was no reason why SB should not have disclosed ENG's identity to OCCI at a much earlier stage. In this connection, it is of interest to note that Mr. TAN stated that, when he thought he was going to prosecute this case in the Sessions Court, he exercised considerable care because he knew that ENG was a rogue and a confidence trickster. He does not, however, 40

appear to have passed this information on to anyone else.

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(iv) TO DETERMINE THE DEGREE OF SUPERVISION OVER THE WORK OF THE INVESTIGATING OFFICER BY OCCI PENANG, OR ANY ASSISTANT OF HIS, DURING THE COURSE OF THE INVESTIGATION.

Extracts from
the Board of
Enquiry:-
(d) Findings
of the Board
(Part III)
continued

10 79. There was very little supervision by OCCI over the investigating officer who appears to have been trusted completely. The I.O., although a junior Inspector, had - at that time - the reputation of being a very competent investigating officer, and OCCI had no reason to doubt his ability to handle the case. However, the Board are of opinion that, in a case which involved the setting of a trap and the use of 'agents provocateurs', the investigation should have been undertaken by a gazetted officer, under the supervision of the OCCI.

20 (v) TO EXAMINE THE MANNER IN WHICH THE EVIDENCE TO BE ADDUCED AT THE TRIAL WAS PRESENTED TO THE DPP PRIOR TO THE HEARING OF THE CASE.

30 80. There appear to have been at least three discussions with the DPP, but no record of his instructions was made on the I/P, other than a short minute by OCCI, dated 13 July, in which he noted that DPP had instructed that the trial should be held in the Sessions Court. This is the only minute in the I/P by OCCI, and DPP did not minute on the IP until after the trial in the High Court when perjury had been committed. OCCI did not read the I/P, neither does the DPP appear to have done so.

(vi) TO DETERMINE WHETHER THE ALLEGED CRIMINAL ACT, OR ANY OTHER CRIMINAL ACTS, ARISING FROM THE PRESENTATION OF EVIDENCE IN THIS CASE WAS DUE TO LACK OF SUPERVISION, LACK OF LIAISON OR WITHHOLDING OF EVIDENCE BY EITHER SB OR CID PENANG.

40 81. The various criminal acts committed by police officers were due to stupidity, lack of supervision and the dishonesty of the investigating officer, coupled with the fact that Insp. NG regarded Insp. KANDA as his superior officer. The I/P itself is

Defendant's
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Extracts from
the Board of
Enquiry:-
(d) Findings
of the Board
(Part III)
continued

largely a fabricated document. The Board consider that Mr. TAN should have reported immediately, in more specific terms, as soon as he discovered that Insp. KANDA had instructed Insp. NG to say in evidence that he had attended the meeting at Sepoy Lines on 25 May, when in fact this meeting was attended by Insp. TEOH.
