CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.No.158/2001

New Delhi, this the 1st day of May, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

H.C.Jatav ..Applicant
(By Advocate:Sh.Sachin Chauhan)

Versus

Union of India & Ors. ...Respondents
(By Advocate: Shri N.S.Mehta)

Corum:-

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the reporter or not? YES

2. Whether it needs to be circulated to Benches of the Tribunal? NO

(Govindan S. Tampi)
Member (A)

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Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri Govindan S.Tampi, Member (A)

H.C.Jatav,
S/o Late Ch. Hardeva Ram,
Aged about: 67 Years,
R/o E-7/2, Vasant Vihar,
New Delhi-110057.

And retired as:

Director General of Police,
Home Guard and Civil Defence,
Government of National Capital Territory of Delhi
New Delhi. ...Applicant.

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
through: the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.

2. Govt. of National Capital Territory of Delhi
through the Chief Secretary,
5, Sham Nath Marge,
Delhi-110005.

3. Union Public Service Commission,
through the Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011. ...Respondents.

By Advocate: Shri N.S.Mehta)

ORDER(ORAL)

By Shri Govindan S.Tampi:

The applicant is aggrieved by the orders No.14033/6/92-UTS dated 13.3.1992 initiating departmental proceedings against him, No.14033/6/92-UTS dated 07.08.2000 effecting 30% cut in his pension for a period of five years and Office Order No.502 in F. No.ESTT.6(7)/H- 88-CDHG/11419 dated 29.9.2000, making the order of 30% cut in his pension, effective from 01.10.2000 for a period of

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five years.

2. Heard Shri Sachin Chauhan, Advocate, who appeared for applicant and Shri N.S.Mehta, Learned Senior Counsel appearing for the respondents.

3. Shri H.C.Jatav, the applicant joined Indian Police Service (IPS) in 1959 and had risen through successive promotions to the rank of Inspector General of Police and has been working as Commander General, Home Guards and Director, Civil Defence Delhi since 1988 from which post he has retired on superannuation on 31.3.1992. During the year 1984, following the assassination of Smt. Indira Gandhi, Prime Minister of India (as she then was), when there was mass scale disturbances, the applicant was working as Additional Commissioner of Police, Delhi Range, comprising Central North and East District of Delhi and he had given a good account of himself in curbing threats to law and order. Still on 18.3.1992, barely two weeks from his retirement on superannuation he was chargesheeted, alleging gross negligence and dereliction of duty. The said chargesheet, containing 8 articles, alleged that the applicant had failed to maintain devotion to duty and had acted in a manner unbecoming of a Member of All India Service, by violating the provisions of Rule 3 of All Indian Service (Conduct) Rules, 1968. The applicant's having denied the charges, enquiry proceedings were ordered and the Inquiry Officer at the conclusion of the enquiry in his report dated 23.3.1998, held that none of the 8 articles of charge raised in the chargesheet, was proved. However, the Disciplinary Authority by

his Order No. 14033/6/92-UTS dated 15.10.96 disagreed from the findings of the Inquiry Officer in respect of all the articles and desired the applicant to file his representation, if any, in the matter. The applicant explained in his position in detail in his representation dated 27.10.98 and prayed that the proceedings against him be dropped. The matter was thereafter referred to the Union Public Service Commission (UPSC) on 03.5.2000. The Commission in their letter F.3/2/84.99-SI dated 6.7.2000, opined that none of the charges levelled against the applicant was proved and advised, taking into account all the aspect relevant to the case, that "ends of justice will be met in this case if the proceedings against Shri S.C.Jatav are dropped and he is exonerated of the charges levelled against him". However, the Disciplinary Authority by its detailed order dated 7.8.2000, declined to accept the advice of the Commission and imposed on the applicant the penalty of the 30% cut, in pension for a period of five years, which was made effective from 01.10.2000. The applicant's Memorial dated 24.8.2000 addressed to the President of India was rejected by letter No. 26011-17-2000-IPS.II dated 20.11.2000. Hence this OA.

4. The grounds raised by the applicant in his OA as below:

(a) while it was the absolute prerogative of the disciplinary of authority to disagree the findings of the Inquiry Officer, he should have done so after recording cogent reasons for his action, which in this case he had failed to do;

(b) all the articles of charge raised in the

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chargesheet had been effectively and properly rebutted by the applicant during the course of the enquiry, which led to the IO's recording the findings that none of the articles in the chargesheet was proved;

(c) UPSC, an impartial constitutional authority had gone thorough all the relevant documents and had recommended that the proceedings against the applicant be dropped and he be exonerated as none of the charges was held to be proved by the IO;

(d) the decision of Disciplinary Authority did not have any legal basis as the present proceedings was a case of "no evidence" and proved to be so by the IO, a view duly endorsed by the UPSC;

(e) all the above points have been duly brought out by the applicant in his Memorial to the President;

(f) in terms of Rule 9 (2) of the All India Services (Disciplined and Appeal) Rules, 1968 penalties cannot be imposed on a pensioner as recovery or withholding of withdrawal from the pension was not included among the penalties under Rules ibid. It was also necessary that before proceeding to deal with the pension respondents should have proved in departmental proceedings that the pensioner had been found guilty of grave misconduct which did not access in the instant case.

(g) having referred to the matter to the UPSC, the advice tendered by them should have been accepted as rejection of the same would reduce the Commission's advice a meaningless formality and

(h) the applicant had been grossly discriminated in the above matter. While the

Commissioner of Police at the relevant time who was criticised for his failure by no less a person than the then Chief of Army Staff, was not proceeded against and was even given an assignment after retirement, the applicant has been chargesheeted nearly 13 years after the alleged events, and immediately preceding his retirement on superannuation.

In the above circumstance, the applicant prays that the proceedings against him and the penalty imposed on him be held invalid and justice rendered to him.

5. Fervently arguing on behalf of the applicant, Shri Sachin Chauhan, learned counsel pointed out that there were quite a few inconsistencies in the Disciplinary Authority's disagreement note and his final order. Inspite of the IO's recording a finding that none of the charges stood proved, a view forcefully endorsed ;by UPSC, the respondents have gone ahead and punished the applicant, in a case where there was no evidence at all. He also urged that the Disciplinary Authority's order contained details and reference to facts which were held back in the disagreement note, thereby denying the applicant the opportunity to effectively explain his case and defend himself. He also averred that there was no truth in the alleged admission of guilt referred to the para in the disagreement note and the final order. He stated that the Disciplinary Authority had not brought out adequate and satisfactory reasons for differing from the findings recorded by the IO and even after UPSC had stood by the IO's finding the Disciplinary Authority proceeded

to punish him. The order being illegal, improper and discriminatory Tribunal's immediate interference was called for to render him justice pleaded Shri Chauhan.

6. In the detailed reply filed on behalf of the respondents the pleadings by the applicant are stoutly opposed. The applicant had not acquitted himself creditably, in the days of arson and looting that followed, the assassination of the then Prime Minister. His averments to the contrary are not based on facts. The applicant's virtual inaction at the time of the crisis, compounded by his inability to take stock of the situation and control it, cast a huge burden on the Administration, as far as the maintenance of law and order in Delhi in those highly charged days was concerned. He was accordingly chargesheeted and correctly too. As the report by the I.O. exonerating did not represent the proper application of facts and circumstances of the case, the Disciplinary Authority chose to differ from the report. Accordingly, he issued a note of disagreement, and duly communicated the same to the applicant. After obtaining the applicant's representation, the respondents also took up the mandatory consultation with the UPSC was also undertaken, whereafter the Disciplinary Authority choose to impose on the applicant, who had become a pensioner by then, cut in his pension. This was done after due deliberations and after taking into consideration all the relevant facts. Keeping in mind the above, his Memorial dated 24.8.2000, addressed to the President of India, was also rejected. Perusal of the Disciplinary Authority's order would make it clear

that the I.O.'s report was faulty and that all the 8 articles of charge stood proved. D.A's order rejecting I.O.'s report as well as the opinion of the UPSC was based on sound reasons and cannot be faulted. Neither the IO nor the UPSC has the final say in this matter, which is squarely within the exclusive prerogative of the D.A. While consultation with the UPSC was mandatory, the DA had every authority to differ from the same and record its own findings, on its independent appreciation of the facts and circumstances of the case in the backdrop of law and instructions.

7. D.A. had acted properly in the above manner and the same cannot be called in question. The applicant is attempting to call in question the D.A.'s order by bringing in the alleged violations of principles of natural justice, which had not at all occurred. The applicant is also misleading the Tribunal by stating that recovery from or holding back of the pension was not one of the penalties enumerated in the All India Services (AIS) (Discipline and Appeal) Rules, and could not have been imposed on him conveniently overlooking the fact that the proceedings could have been very well continued in accordance with Rule 6 (1) (A) of the AIS (Death cum Retirement Benefits) Rules, 1958, which in fact has been done in this case. The entire procedure has been gone through properly with no infirmities and strictly in accordance with AIS (D&A) Rules. Therefore, no intervention at all from the Tribunal was called for and the OA should be dismissed, plead the respondents.

8. Shri N.S.Mehta, Sr. Govt. Counsel,

appearing on behalf of the respondents, reiterates the above pleadings.

9. We have carefully deliberated upon the rival contentions in the matter and perused all the relevant documents on record.

10. The facts are not disputed. The applicant who was an Additional Commissioner of Police Delhi, during 1984 was chargesheeted on 13.3.1992 just before his retirement on superannuation for his alleged dereliction of duties during the days of arson and looting in Delhi in Oct.-Nov.-Dec. 84. In the enquiry that followed all the eight articles of charge, annexed to the chargesheet were shown as not proved. The D.A., however, disagreed with the I.O.'s report and after obtaining the applicant's representation on his note of disagreement and the opinion of UPSC imposed on the applicant on 07.8.2000 the penalty of 25% cut in pension for a period of five years.

11. While the applicant holds that the entire disciplinary proceedings were vitiated and that the recovery from his pension could not have been ordered, the respondents point out that the proceedings had been gone through correctly and legally, warranting no interference from the Tribunal. On examination of the issues we do not find any merit in the ~~preliminary objection~~ plea raised by the applicant that the cut in or recovery from the pension could not have been imposed on him. The proceedings were initiated against the applicant in terms off AIS (D&A) Rules, when he was still in service, and the same was correctly continued in terms of AIS (DCR) Rules. The respondents had every right to continue the

disciplinary proceedings and to carry it to the logical conclusion and they cannot be faulted on this ground. Coming to the merits of the case, however, we find that the position in quite different. As pointed above, all the eight articles of the chargesheet issued to the applicant were found to be not proved by the IO. in terms of his report dated 25.3.1998. The D.A., however, disagreed from all the articles and recorded a note of disagreement on 15.10.1998 which became the real basis of his final order dated 07.8.2000 penalising the applicant. Not only that he had also in the process disagreed from the opinion dated 06.7.2000 of the UPSC, which exonerated the applicant in full. The D.A. has in law, every right and discretion to differ from the findings recorded by the IO as well as the opinion expressed by the UPSC, as he is the final authority in disciplinary matters, but he has to exercise this right correctly and judiciously. It is in this context that we find that the action by the D.A. fails to win our approval. We reproduce in full Office Memorandum dated 15.10.1998 following the note of disagreement and the order dated 07.8.2000:-

"<u>Office Memorandum dated 15.10.1998</u>

Subject: Disciplinary proceedings against Shri S.C.Jatav, IPS (retired) - regarding.

The undersigned is directed to forward herewith a copy of the Inquiry Report on the above subject and to say that the competent disciplinary authority after careful consideration of the relevant factors of the case has tentatively decided to disagree with the findings of the Inquiry Officer in respect of the following articles of charge, due to the reasons indicated therein:-

(i) Article-I During the course of inquiry, Shri Jatav has himself admitted that he was unaware of the incidents of rioting in the Trilokpuri area and it was known to him only after two days. This is sufficient to infer that he was thoroughly ineffective to what was happening in the area under charge. This is a sufficient proof to indict him for his total failure to effectively contain the rioting.

(ii) Article-II S/Shri Kewal Singh, ACP, and Gurmail Singh, SHO/Subzi Mandi had rounded up 90 rioteers on 31/10.94 itself from who looted property was recovered. Even then they were transferred by Shri S.K.Singh, DCP concerned on the order of "seniors" without specifying by him who the "seniors" were. The Commissioner of Police had not approved any such transfer and naturally it could be only the Addl. Commissioner of Police (Sri Jatav), in-charge of the Delhi range. Therefore, it can be concluded that such transfer orders were made by the DCP concerned on the instructions and with the approval of Shri Jatav.

(iii) Article-III Effective imposition of Sec.144 Cr.P.C. was primarily the responsibility of SHOs and the DCP concerned and on this count to some extent the benefit of doubt can be given to the Charged Officer, Shri Jatav. However, in substance he failed to supervise the mobilisation of force to maximum effect: that the Police had not even been seized with the Trilokpuri area massacre's seriousness shows that the police were not touring that area effectively for imposition of Sec.144.

(iv) Article-IV The Charged Officer considered his responsibility as over after sending a message to RPF Hqrs. through the PCR that they detail a responsible officer to prevent firing. The singular incident of Trilokpuri would show that the officer was even unaware of massacre within his jurisdiction 30 hours after it began. Thus the supervision was ineffective and negligent.

(v) Article-V The Charged Officer denied that he had issued any instructions that those who had looted property should deposit it at the Police Stations. This contention is not correct as the relevant logbook entry establishes that he had in fact issued such instructions. He has also pleaded that even if such orders were issued, these were similar to that of VDIS (Voluntary Disclosures of Income-Tax Scheme) and there was nothing wrong in it.

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He has thus acquiesced to having issued such as order, for which he had no authority at all, except with the prior approval of Government. Thus he cannot be absolved of the charge under Article V of the charge-sheet.

(vi) Article-VI It has been shown earlier that with his possible approval, some effective officers were taken off from active duty and confined to Police Stations, and that he ordered for depositing looted property failing which action would be taken against the miscreants. This was clearly an order demoralising the police force as irrespective of surrendering looted property, the miscreants ought to have been acted against with exemplary strictness.

(viii) Article-VII There are instances that the Charged Officer misreported the events to his superiors and highlighted his own role to control the situation without actually being involved with them. Thee charge has been denied by him who taken the defence that he was answerable only to his superior viz., the Commissioner of Police, and no one else. This is an erroneous assumption. The Government servant is required to be correct in his conduct on objective assessment, not merely on the subjective appraisal of his immediate superior."

Absracts from Order No.14033/6/92-UTS dated 07.8.2000

ARTICLE-I

"17. Shri T.Joseph Maliakkan, who appeared as PW-14 before the Inquiring Authority, gave a graphic account of systematic manner in which the innocent members of Sikh community were brutally killed in Block No.32 of Trilokpuri on the 1st & 2nd November, 1984. The main entrance to this Block, according to him, was blocked by the mob which had gathered inside the Block a free hand to kill innocent people. Thee number of persons reported to have been killed in this Block was over 90 and yet the impression the police officials on duty gave was the Shri Rahul Kuldip Bedi, who appeared as PW-15 before the Inquiring Authority, has also in his testimony castigated the role of police in handling the riotous incidents. Shri Jatav himself admitted in the corse of the inquiry that he was not aware of the spree of killings in Trilokpuri and that it was only late in the evening on 2nd November, 1984 when he visited the area that he came to know about these killings. The very fact that he was not even aware of what was happening in the area under his jurisdiction establishes the lack of supervisory control on his part.

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ARTICLE-II

18. The two Sikh Police different namely, Shri Kewal Singh (who at the relevant time functioned as Assistant Commissioner of Police, Subzi Mandi) and Shri Gurmail Singh (who at the relevant time functioned as Station House Officer, Subzi Mandi) were relieved of their respective charges in the evening of 31st October, 1984. This measure was ostensibly taken on the ground that these two police officers were likely to become a target of the mobs rampaging the city. It was, however, ignored that these two officers had done a commendable job in as much as they had by the evening of the first day of rioting itself rounded up over 90 rioteers from who looted property was recovered. Shri S.K.Singh, who during the relevant time functioned as Deputy Commissioner of Police in-charge of this area, asserted during the course of deposition before the Inquiring Authority that he passed these orders after obtaining the approval of his "seniors". The officer senior to Shri S.K.Singh was either the said Shri Jatav or the Commissioner of Police, Delhi. It is, therefore, clear that the decision to relieve the two Sikh officers of their charge was taken either with the approval of the said Shri Jatav himself or the Commissioner of Police, Delhi. If it were the latter, Shri S.K.Singh in his testimony before the Inquiring Authority had no reason not to mention so. He instead chose to remain vague at this point. The only reasonable conclusion is that when the approval was not given by the Commissioner of Police, the only other "senior" officer, who could have given the approval, was the said Shri Jatav himself.

ARTICLE-III

19. The said Shri H.C.Jatav, under this article of charge is accused to have failed to effectively enforce Section 144 of Cr.P.C. promulgated on 31st October, 1984 as also the curfew order which was subsequently imposed in the entire area of Delhi Range. The said Shri Jatav has pleaded that the prohibitory orders were to be enforced by those who had the necessary executive authority and resources at their command which he in the capacity of being the Additional Commissioner of Police of the Range did not have. The Inquiry Officer in his report has accepted that there indeed was failure to enforce the prohibitory orders. He has, however, held that there was no evidence to show that the said Shri Jatav was responsible for this

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action of omission. Shri Amod Kanth and Shri S.K.Singh who appeared as PW-I and PW-2 respectively before the Inquiring Officer deposed that they could not enforce the prohibitory orders as the strength of the Police was less and the number of the rioteers on the rampage was large. While this might be so, the incident of Trilokpuri clearly demonstrates that whatever force was available acted in a partisan manner and in fact encouraged the looters, arsonists and killers. The said Shri Jatav who at the relevant time occupied the position of authority in the Range cannot absolve himself of this blame. He has also failed to bring forth any evidence to prove that he made any serious efforts to enforce the prohibitory orders and Section 144 of Cr.P.C. in the Districts falling under his jurisdiction.

ARTICLE-IV

20. It has not been disputed that a group of RPF Jawans restored to unprovoked and unwarranted firing upon a group of Sikhs who had taken refuse inside a Gurudwara. The said Shri Jatav in the course of inquiry has admitted that he was a witness to this shameful incident. He has, however, pleaded that he did ask the RPF Jawans to stop the unprovoked firing but as his instructions were not complied with by them, he sent to a message to the REF Headquarters through Police Control that they should depute a responsible officer to prevent the firing. The point that arises is whether the action taken by the accused officer in stopping the unprovoked firing was sufficient. The view that no evidence was produced in the course of inquiry to show that the message sent by the said Shri Jatav to RPF Headquarters did not have the desired effect is not relevant. The fact of the matter is that there is also on evidence available to show that the said Shri Jatav cared to take any follow up action or even ascertain whether the message he had sent had the desired effect. This clearly establishes that he had treated this shameful incident in a routine and casual manner.

ARTICLE-V

21. The said Shri Jatav was accused of having passed an illegal order in which he directed all the Station Officers (SHOs) of Delhi Range to announce in their respective areas that those having looted property should deposit it in the Police Stations failing which legal action would be taken on recovery. It is on record in the relevant log book that he said Shri Jatav

had in fact sent a message to all the Deputy Commissioners of Police under his control that an announcement be made that looters should deposit looted property with the Police failing which legal action would be taken against them. This is a documented evidence of contemporaneous nature and can not be refuted.

ARTICLE-VIII

22. The statements brought out in the course of inquiry reveals several instances in support of this article of charge. These are as follows:

(a) The said Shri Jatav has claimed that he did not visit East District on 1st November, 1984. However, this claim is not tenable as it is on record that he sent a message to the DCP(East District) that he should meet him at 11.40 hours on 1st November, 1984 at Wazirabad.

(b) The said Shri Jatav claimed credit for handling situation at Sis Ganj Gurudwara on 1st Novermber, 1984. The fact of the matter, however, is that the situation had already been tackled by the Additional DCP(North) and the said Shri Jatav had played no role in the handling of the situation in which one rioter had been killed in police firing;

(c) The said Shri Jatav claimed in his d.o. No.2797 dated 11/13th November, 1984 that he had ordered police firing in the area of P.P.Shanti Nagar as a result of which the mob was dispersed. However, his own wireless long book entry shows that there is no mention of his having issued any order for firing. There s also no such incident recorded in the relevant records of Police Station concerned; and (d) The claim made by the Said Shri Jatav that tear gas shells were used at 1005 hours and 1053 hours on 1st November, 1984 at Pahargang/Sadar Thana to disperse the mob is not supported by any entry in the relevant records of the Police Station concerned.

11. It would be observed that in respect of each of the eight articles, there is considerable difference between the two documents. While in the disagreement note the D.A. has raised certain points, his order details a number of facts and circumstances and the averments by various parties on those points

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which have been kept back from the applicant. Resultantly, the applicant had been denied the opportunity of learning what he was up against and has thus been prevented from making any effective representation against each of those charges and defend himself. This has led to violation of principles of natural justice, which have seriously prejudiced his case as brought out by the Hon'ble Supreme Court in the cases of Punjab National Bank & Ors. Vs. Kunj Behari Misra [1999 (1) SLJ 271] and Harender Arora Vs. UOI and Others [(2001) 6 SCC 392] (Evidently these have prompted the UPSC who was consulted in the matter to record the opinion that none of the charges levelled against the applicant was proved and that taking an overall view it felt that ends of justice will bee met if the proceedings against the applicant are dropped and he is exonerated). The proceedings thus having been vitiated the impugned orders are liable to be quashed and set aside. However, as this matter involves considerable importance relating as it does to the role played by a Senior Police Officer relating to the maintenance of law and order in a highly explosive situation we feel, it would be in the fitness of things to permit the respondents to take necessary action, once again, if so advised and felt needed, but in accordance to the law.

12. In the above view of the matter the OA succeeds and is accordingly allowed. The impugned orders dated 15.10.1998, 07.8.2000 and 28.11.2000 are quashed and set aside. The matter is remitted to the D.A. to start the proceedings once again if so

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advised and felt needed, from the stage of supply of I.O.'s report. The D.A. shall in the disagreement note indicate all the points and all full facts on the basis of which, he has chosen to differ from the I.O.'s report so that applicant will have a full and proper opportunity to explain and/or defend his case effectively. Decision in the matter could be taken thereafter in accordancce with law. Needless to state that the recovery/cut in the pension shall be stopped forthwith. We would like to add that we do not express any opinion on the merits of the issues involved. No costs.

(Govindan S. Tampi)
Member (A)

(V.S.Aggarwal)
Chairman

/kd/