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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. OA 1803/87.

September 23, 1988.

Shri R.N. Gupta Applicant.

vs.

Union of India & Ors. Respondents.

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ... Mr. Kapil Sibal, Sr. Counsel
with Mr. J.K. Sibal & Ms.
Manjari Dingwaney, counsel.

For the respondents ... Mr. P.H. Ramchandani, Sr.
counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

This is an application by a member of the
Indian Administrative Service of the West Bengal Cadre
on deputation with the Central Government as Deputy
Secretary in the Department of Youth Affairs and Sports,
Ministry of Human Resources & Development, Government of
India, New Delhi calling in question Order No. 27/17/87-EO
(MM) dated 4th December, 1987 approving his premature
reversion to the State Government. The impugned order
reads as under:

"The Appointments Committee of the Cabinet
have approved the pre-mature reversion of
Shri Robin Gupta, IAS(WB:74) presently working
as Deputy Secretary in the Department of

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Youth Affairs and Sports. It is requested that Shri Robin Gupta be relieved from his present posting and directed to report to the Government of West Bengal for his future posting under intimation to the Department.

Sd/- Shekhar Agarwal
Deputy Secretary (MM)*.

Shorn of all details, it is the case of the applicant that the minimum tenure of deputation at the level of the Deputy Secretary with the Government of India is four years. He has been on deputation with the Central Government w.e.f. 15th October, 1984. The impugned order reverting him to his parent cadre made on December 4, 1987 before the expiry of the said period of four years and without the concurrence of the West Bengal Government which is the lending authority, is violative of the Central Staffing Scheme of Senior Administrative posts. It is also contended that this order is by way of penalty. According to him the basis of the impugned order are two incidents involving the Delhi Police and himself which occurred on 3/4th April, 1987 and on 28/29th August, 1987. He alleges that the order was made under the influence of the Delhi Police on extraneous considerations. These allegations are denied by the respondents. We will refer to the version of the applicant and the specific plea of the respondents hereinafter. Suffice to note at this

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stage, that the respondents deny that the impugned order is by way of penalty.

Let us examine the merit of each of these grounds of attack. The Central Staffing Scheme inter alia, prescribes the periods of tenure in paragraph 7 which reads as under:

"Periods of tenure: (i) Officers who are borrowed for appointment to posts of or equivalent to Deputy Secretary will ordinarily revert to the parent State Cadre or Service on the expiry of four years and officers who are borrowed for appointments to posts of or equivalent to Joint Secretary and Secretary will similarly revert on the expiry of a period of five years. (Emphasis supplied).

(ii) In exceptional circumstances, however, where the public interest so demands, the tenure of an individual officer in the same post or any other post or class of post may be extended or curtailed with the concurrence of the lending authority."

It is true that normal period of deputation at the level of Deputy Secretary is four years as laid down in the Central Staffing Scheme. But from a reading of paragraph 7 of the Central Staffing Scheme, it is clear that this period is not unalterable. The words 'will ordinarily revert to the parent State Cadre or Service on the expiry of four years' ^{imply that} depening upon circumstances, the period of deputation could be shorter or longer than four years. Paragraph 7(ii) specifically declares that the tenure may be extended or curtailed. The power to curtail the

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tenure of deputation vests in the authority which borrowed the services. Ordering reversion to the State cadre before the expiry of the tenure of four years is, therefore, per se not illegal or without jurisdiction.

It is also urged that under the Scheme of in the case of _____ of Staffing senior administrative posts and above the rank of Deputy Secretary in the Government of India, it was obligatory for the Government to have obtained the concurrence of the lending authority, i.e., West Bengal Government before curtailing the period of deputation. Such a concurrence not having been obtained, the order of reversion is unsustainable.

It is pleaded by the respondents that the order placing the services of the applicant at the disposal of the Government of West Bengal was issued on 10th December, 1987. The officer belongs to West Bengal Cadre and that government had not objected to his repatriation till date. In yet another reply dated 2.9.1988 filed on behalf of the respondents, it was averred in paragraph 8 "As regards concurrence of his West cadre, the Chief Secretary, West Bengal was advised of the steps taken by the Government of India personally by the Establishment Officer. No objection was raised to the same on behalf of the Government of West Bengal even after issue of formal orders as far back as 4th December, 1987."

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A close reading of the scheme would make it clear that it does not envisage prior concurrence of the lending authority for curtailing the tenure of deputation and reversion of the officer on Central deputation to his parent cadre. All that it requires is concurrence of the lending authority. The impugned order was made on 4th December, 1987 and it is stated in the reply that the Establishment Officer of the Central Government advised the Chief Secretary, West Bengal of the steps taken by the Central Government and that no objection was raised to the same on behalf of the Government of West Bengal even after a lapse of nearly 9 months. From this, it is clear that they have no objection whatsoever to the repatriation of the applicant. From this, it could rightly be inferred that the West Bengal Govt. concurs with the action taken. These two grounds of attack fail and are accordingly rejected. The only question, therefore, remains to be considered is whether the impugned order is by way of penalty or for extraneous grounds and is liable to be struck down on that account. For this purpose, it is necessary to note the particulars of the two incidents as stated by the applicant which, according to him, led to the Delhi Police influencing the issuance of the impugned order.

On the evening of 3rd April, 1987 after

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visiting a colleague and a friend, an IAS Officer, he went to his mother's brother staying at 4/11, East Patel Nagar, New Delhi, where he had dinner with him and left East Patel Nagar at about 11.40 p.m. On reaching the crossing at Babar Road and Central Lane, when he was turning into the Lane leading to his residence, he was ordered to stop by the occupants of Police Control Room Van in which there were five policemen. He drove straight to his residence which was just 30 yards and stopped the car. It is his case that as he was trying to get out of the car, a policeman came up to him and remarked:

"Club hotelon mein jate ho. Hamara Khayal Rakho. Kya ham phazul ghoom rahai hain?"

He asked him to leave him alone. At this point, the other policemen had also joined him and abusing him in unprintable language dragged him out of the car. When he tried to defend himself against the assault, in the course of which his shirt was torn to shreds, he received scratches and abrasions on his chest. In spite of having disclosed his identity, they abused him/ using filthy language and continued to hit him. In the meanwhile, on hearing the commotion, his driver Abdul Gaffoor came to his rescue. He too was assaulted. When Abdul Gaffoor tried to run towards the back portion of the house, he was chased by

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the policemen who forced entry into the house through the service entrance and continued to abuse him and the servant. They even entered his mother's bed room who is over 75 years old. She suffered great mental shock. His protests were of no avail. At this point, as he tried to contact some IPS Officers over the phone, the police left the place. He then spoke over the phone to the SHO, Tilak Marg, who assured him of proper action. In the morning, he went to see Mr. Trilochan Singh, Deputy Press Secretary to the former President of India. There he received a telephone call from his residence that the SHO, Tilak Marg was at his residence. He returned home and the SHO told him that the matter could be amicably sorted out with the concerned Head Constable who was on duty on that night. He accompanied the SHO to the Tilak Marg Police Station. The Head Constable was not present. The SHO rang up his DCP for instructions and handed over the phone to the applicant. The applicant alleges that the DCP was very rude and aggressive and accused the applicant of having assaulted his men and that the applicant had to be arrested and could only be released on bail. He was accordingly placed under formal arrest. His mother came and bailed him out. The petitioner stoutly denies the allegations of the DCP as false and absurd. On the 5th of April, 1987, the report of this incident appeared

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in several newspapers in more or less the same language.
reported

Resident Editor of "Statesman" that their report was based on a police handout. The applicant asserts that these press reports carried false allegations, that he had assaulted the policemen and was arrested. He made a representation to the Lt. Governor on 9th April, 1987 to drop this false case. He gave a representation to the Police Commissioner, Delhi on 4.4.1987 and also met him. Sometime in early August, 1987, SHO (Tilak Marg) asked him to visit the Police Station stating that the police was keen to drop the case. He went and saw an IPS Officer and the Head Constable who was said to have been assaulted by him and on the basis of whose statement the FIR was lodged against him. The Head Constable said that it was a case of misunderstanding. The applicant told the IPS Officer that he was prepared to forget the entire episode. The applicant states that even though he wanted to take legal action against the police, he restrained himself in the interest of goodwill between the Police and the Administrative Service. That case was closed.

Again on 28/29th August, 1987, at about mid-night, driving in his family car No. DBK 91, he was returning from a Dinner party in the house of a friend and a colleague, Miss Minna Ahuja, IAS, Deputy Secretary,

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Department of Education, Ministry of Human Resource Development, Government of India, at West End Colony, New Delhi. When he reached Thyagaraj Marg, a PCR Van came and the policemen in the said Van whistled and shouted to stop. When he stopped the car, one of the policemen whose name was later discovered to be Head Constable Om Prakash No.1420/ND questioned him in a very rude and aggressive manner and "as to who I was and wherefrom I was coming and where I was going to". The applicant identified himself and stated that he was an IAS Officer returning from a Dinner party and going to 24, Central Lane, Babar Road, near Bengali Market.

One policeman in the PCR Van belligerently remarked:

"Yeh to wohi Bengali Market Wala IAS Officer Hai Jis Nei Hamara Pahela Case withdrew Karwaya Hai."

The applicant kept quiet and drove towards his house at 24, Central Lane, Bengali Market. On reaching his residence, he noticed two police jeeps parked opposite his residence and one PCR truck at the entrance of the lane packed with armed policemen. Just then, the PCR van which had checked him at Thyagaraja Marg also arrived (making the total number of policemen present on the spot about 30 to 40 armed men). Mr. Om Parkash, Head Constable and others jumped out of the PCR Van and dragged him out of his car and started slapping, kicking and thrashing him with lathis, flinging foul and filthy

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abuses. The applicant received grievous injuries on his knee, particularly on the left knee due to lathi blows, resulting in internal derangement of the knee joint. It is his case that due to this injury he was unable to stand without support as his cartileges, muscles, ligaments and tendons in the area of the left keen had been smashed during the assault. The policeman snatched away the keys of his car and illegally drove it away to Tilak Marg Police Station and released only on 1.9.1987. Hearing this commotion, his driver came out and at the applicant's request brought his Identity Card and a glass of water. The policemen pushed away the driver and told him to get lost, smashed the glass of water and threw the Identity Card on the ground. The Head Constable, Om Prakash, and other policemen pushed him into the police jeep and forcibly took him to Ram Manohar Lohia Hospital. At the hospital, although he pleaded with the doctor that he had been seriously injured and could not stand without support and was in excruciating pain and shock and that he should arrange for his suitable treatment, he did not pay any attention. From there, the policemen took him away to Tilak Marg Police Station. On the way, the policemen continued to intimidate him and told that on the previous occasion he had been able to get the case withdrawn by the Lt. Governor, Delhi but this time they would not spare him and

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that they would teach him a proper lesson. At the Tilak Marg Police Station, he was illegally detained and was at the mercy of the policemen till 9.00 in the morning. During this period, Shri Yatindra Kumar S.I. Tyagi stated that he would teach him a lesson and that he would be taken in handcuffs to Patiala House Courts the next day. Meanwhile, the applicant's driver, on knowing that he was being detained at the Tilak Marg Police Station, reached the Police Station around 3.00 AM along with his neighbour, Mr. Suresh Bajaj. They were told to come in the morning. They came again at around 6.00 AM but were not allowed to meet him till 8.30 AM. Eventually, he was released around 9.00 AM on his personal bond and the bail bond furnished by Mr. Suresh Bajaj. On the same day, the applicant was taken to Jai Prakash Narayan Hospital by a friend, Shri Sunil Dogra. The staff at the hospital asked them to go to Ram Manohar Loh Hospital as his case fell within the jurisdiction of that hospital. At RML hospital, a medico-legal case No. 97457 was registered where an X-Ray was taken and his leg was put in plaster. Thereafter, he had not fully recovered and was still in excruciating pain and unable to stand on his legs without support. On advice he went to Batra Hospital and Medical Centre, Tughlakabad where he was treated by Dr. Hans U. Nagar.

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He was advised Arthoscopic surgery which was performed on 14.10.1987 by the Orthopaedic Surgeon, Dr. Ashok Rajgopal. The applicant filed a complaint under Section 200 Cr.P.C. against four policemen for alleged offences punishable under Sections 323/325/342/352/506/166/167 read with Section 34 IFC and the Tilak Marg Police Station registered a case against the applicant under Sections 332/353/186 IFC vide No.282/87 dated 29.8.1987. Those two cases are pending. He made a representation to the Cabinet Secretary on 31st August, 1987 and again on 7th September, 1987 that he should be given adequate opportunity to explain the false cases instituted against him. The applicant alleges that instead of giving a hearing or making an inquiry with notice to him, believing the version of the police, the respondents have decided to punish him by curtailing his tenure drastically. He alleges that this has been done because of the pressure of the police organisation of West Bengal as a whole. The IAS Association addressed a letter to the Union Home Minister in this connection demanding action against the police brutality. He further pleads that this order is penal in nature which attaches a stigma and having been made without any inquiry and without giving an opportunity to the applicant to defend

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himself, is unsustainable and must be quashed.

In the counter affidavit, it is denied that "the applicant was transferred to his own cadre in an illegal manner for extraneous consideration under the influence of Delhi Police". It is necessary to extract the relevant plea of the respondents which needs a close scrutiny.

It reads as under:

"It is denied that the applicant was transferred to his own cadre in an illegal manner for extraneous considerations under the influence of Delhi Police. There is no reason for this Respondent to come under the influence of Delhi Police and transfer the applicant for extraneous considerations. The applicant was involved in a series of incidents involving altercation with the Secretary, Delhi Gymkhana Club and Delhi Policemen under influence of liquor. The incidents were widely published in the Newspaper reports. The decision to prematurely repatriate the applicant to his parent cadre was taken by the Government after carefully considering the reports received by the Government on these incidents, as well as various representations submitted by the applicant himself. Government are of the considered view that continuance of the applicant in Delhi on Central Deputation would bring further bad name to the Central Government. It was, therefore, decided that without prejudice to any other action against him, he should be reverted to his parent cadre."

In another counter affidavit, the respondents further stated:-

"The applicant was involved in the following

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incidents which were widely published in the national newspapers:-

- (i) Altercation/scuffle between the applicant and Brig. C.S. Mehta (Rtd.) the then Secretary of the Delhi Gymkhana Club on 20th June, 1986 in the club premises and consequent registration of report with local police station.
- (ii) Incident involving the applicant and the Delhi Police on 3/4 April, 1987.
- (iii) Incidents involving the applicant and the Delhi Police on 28/29 August, 1987.

It is clear that the publicity was widespread as the news was published in many national newspapers simultaneously. The news highlighted the fact that the person involved belonged to IAS and that he held a senior post in the Central Government. The action to revert him to his cadre was taken without prejudice to the outcome of any enquiry which may be conducted by the Government to ascertain the facts of the case. The image of the officer, the service to which he belongs as well as the Department in which he serves and the Government as a whole is tarnished in the public eye with the reporting of such incident and the entire issue is brought before the public eye".

In order to determine whether an order of repatriation to the parent department which incidentally involves transfer from Delhi to a post in the State of

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West Bengal attaches a stigma and is by way of penalty it is necessary to keep in mind the dicta laid down by the Supreme Court in this regard.

In K.H. PHADNIS V. STATE OF MAHARASHTRA (1) Constitution Bench of the Supreme Court considered whether the repatriation of the appellant therein from the temporary post of Controller of Food Grains Department Bombay to his parent department of Excise and Prohibition amounted to a reduction in rank in violation of the provisions contained in Article 311 of the Constitution. The learned Single Judge of the Bombay High Court held that it was an act of punishment and amounted to reduction in rank and quashed the order. The Division Bench of the High Court reversed that judgment and held "that the appellant had no legal right to the post in the Department of Agriculture and Forests and therefore his reversion was not a punishment". The Supreme Court declared:

"In determining whether the reduction is or is not by way of punishment it has to be found out if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his

1. AIR 1971 SC 998.

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substantive rank or the stoppage or postponement of his future chances of promotion, or that in truth and reality the Government has passed the order as and by way of penalty. (Emphasis supplied)

The Court found:

"It is true that the post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character. The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back."

In those circumstances the Court held:

"The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a

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temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted. (Emphasis supplied)

Taking note of facts and circumstances, the Supreme Court held:

"that the order of reversion was in the nature of punishment. The order was not in compliance with the provisions of the Constitution", and accordingly agreed with the Single Judge, allowed the appeal and quashed the order of the Division Bench and the order of reversion.

Dealing with a case of transfer, a Bench of this Tribunal to which we were parties - K.K.JINDAL V. GENERAL MANAGER, NORTHERN RAILWAY & ORS (2) while recognising that the transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard held:

"Since the petitioner was occupying a sensitive post with public dealings, the respondents could perhaps have legitimately transferred him on administrative grounds on receipt of complaints. But the transfer made upon

2. ATR 1986 CAT 304.

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reaching a conclusion that he is indulging in undesirable activities goes a step further inasmuch as it finds him guilty of a conduct not expected of a public servant. Any action taken on that basis apart from attaching a stigma to the petitioner certainly impairs his future career as a public servant. The transfer is punitive. A routine transfer ordered merely on administrative expediency cannot have such penal consequences." (Emphasis supplied)

This judgment was further explained in a later Full Bench decision of this Tribunal in KAMLESH TRIVEDI V. INDIAN COUNCIL OF AGRICULTURAL RESEARCH & ANOTHER (3) wherein it was held:

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a chargesheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case

of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed". (emphasis supplied)

In this case we have, therefore, to see what is the basis or foundation of order of impugned reversion.

The applicant had set out the details of the two incidents and alleged that the respondents have passed the impugned order on the basis of which the Police has registered cases against the applicant in April, 1987 and again in August, 1987 only with a view to satisfy the lobby of the Police. The career of the applicant is being ruined by bringing his reputation in public and official life under a cloud and the impugned order of respondents presumes as proved the guilt of the applicant in the case instituted by the Police. It pre-judges the prosecution launched against the applicant by the police without even giving a hearing to him. It has been passed to "please and appease the police who have concocted a false case against the applicant".

In the reply dated 3.2.1988 filed on behalf of the respondents under the signature of the Deputy

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Secretary, Department of Personnel and Training, New Delhi who vouchsafes that he is fully conversant with the facts and circumstances of the case. His averments so far as they are relevant have already been extracted above. Along with that reply the respondents have filed four annexures. Annexure-I is a d.o. letter dated 14.9.87 addressed by Shri Satish Chandra, Director (Delhi), Govt. of India, Ministry of Home Affairs, New Delhi to Shri V.P.Marwah, Commissioner of Police, Delhi, forwarding a copy of a letter dated 31st August,1987 submitted by the applicant herein regarding police misbehaviour and requesting a detailed report to be sent in this regard. Annexure II is the reply of the Deputy Commissioner of Police, Vigilance, Delhi dated 29.10.1987 sent in response to D.O. letter dated 14.9.1987 (Annexure-I).

In that letter he opined:

"The allegations levelled in the complaint (of the applicant herein) are false and baseless and the facts mentioned in the FIR are true. The case has been put in court and the matter is now sub-judice."

In that letter it was also stated that:

"the complainant (applicant herein) stopped the car, came down and started abusing and threatening the PCR Van men due to annoyance and out of his ego of being an IAS Officer, coupled with state of intoxication. He physically assaulted the Head Constable who sustained injuries."

Annexures III and IV relate to relieving the applicant

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in pursuance of the impugned order dated 4.12.1987.

The applicant filed a rejoinder in which he reiterated his stand and denied the allegations made in the reply. The applicant filed a further affidavit along with the photo copies of the news item published in Hindu, Hindustan Times, Indian Express, Statesman and Times of India all of dated 5.4.1987 reporting the incident of the night of 3.4.1987.

The Hindu inter alia reported:

"The Police said that Mr. Robin Gupta was taken into custody as he had assaulted Head Constable Jangli Ram under the influence of liquor at 1. a.m. while returning home".

The Hindustan Times inter alia reported:

"According to the Head Constable Mr. Gupta came out of his car and started hurling abuses at the policemen. Jangli Ram also alleges that Mr. Gupta was drunk....."

The Indian Express inter alia reported:

"Mr. Robin Gupta, an IAS official posted in the sports department, was arrested in the early hours of Saturday for attacking a policeman who stopped him for drunken driving, the police said...."

The Statesman did not report that he was either drunk or was under the influence of liquor.

The Times of India inter alia reported:

"The Police claim that Mr. Robin Gupta, posted to the human resources development ministry, was under the influence of liquor when the incident took place."

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One of the Annexures (A-1 p.12) is a copy of letter addressed by the applicant to the Secretary to the Govt. of India, Department of Youth Affairs and Sports in which he sought permission to send a rejoinder to UNI/PTI and to major dailies and the Secretary endorsed on that letter that "this is a personal matter. No need to seek my approval".

The other annexure (A-1 p.13) is a copy of letter addressed to the Editors of the said dailies enclosing a copy of his complaint and the medical certificate from L.N.J.P. Narain Hospital which according to him proved that the Police assaulted him and requested them to publish the correct facts in the Press.

The applicant filed an application to direct the respondents to produce the relevant records and the respondents claimed privilege in respect of those records. The applicant did not oppose this claim. In the result, the records are not produced and are not available to be examined by this Tribunal. The Tribunal is thus left with the averments made in the application and the reply of the respondents.

From the narration of facts, it is clear that the applicant mentioned two incidents in which he alleged that the police had abused and beaten him and while they were at fault, they set up a false case against him.

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He had also filed a complaint. Both the matters are sub-judice. On the other hand, the police claim that the applicant had assaulted Head Constable and the police-men on duty at a public place. They have registered a case against him and issued FIR No.116/87 dated 4.4.1987 and FIR No.282/87 dated 29.8.1987. While the former was withdrawn, the latter is pending before the Court. In particular, while the police allege that he was under the influence of liquor, when these incidents occurred, the applicant stoutly denies this allegation. The applicant wanted a thorough enquiry to be made by the Government. What enquiry was made is not clear. What is, however, clear is that the representation of the applicant was sent to the Police Commissioner for a report. The applicant was not asked anything with reference to that report and it is not known what enquiry, if any was made and what was noted in the files before the impugned order was issued. While the applicant contends that the respondents have come to an ex parte conclusion about the incidents which formed the basis for the impugned order, the respondents plead at the bar that they have reverted him to his parent cadre on account of the adverse publicity he got in the Press and not because they reached the conclusion on the police report that he was under the influence of liquor. In the absence

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of the files, which would contain what was the foundation for issuing the impugned order, the record being not made available for a judicial scrutiny, the Tribunal is left with what the respondents themselves have stated in their reply.

The applicant had made inter alia three allegations. That the order was made for extraneous considerations under the influence of Delhi Police. In regard to this, the respondents have specifically stated that in their reply that it was not so. They further averred that there is no reason for this respondent to come under the influence of Delhi Police and transfer the applicant for extraneous considerations. They go on to say: "The applicant was involved in a series of incidents involving altercation with the Secretary, Delhi Gymkhana Club and Delhi Policemen under influence of liquor." That the applicant was under the influence of liquor is an allegation made against him by the Secretary, Delhi Gymkhana Club with reference to an incident which occurred on 21.6.1986 in the Gymkhana Club. That was not mentioned by the applicant but is referred to by the respondents. While the Police allege and the Press reported that he was involved in the incident with the Delhi Policemen under the influence of liquor, the

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applicant vehemently denies the same. The police and the applicant are at variance on this issue. No enquiry was made in the presence of the applicant. The report sent by the Delhi Police on the representation of the applicant was not disclosed to the applicant. Even that report which is placed on record does not state that he had assaulted the policemen under the influence of liquor. The medical report given by the L.N.J.P. Narayan Hospital on 29.8.1987 at 1.55 A.M. merely states that the applicant "has consumed alcohol but clinically at present is not under the influence of it". Yet the respondents in their reply categorically assert that the applicant was involved in a series of incidents involving altercation with the Secretary, Delhi Gymkhana Club and Delhi Policemen under influence of liquor. How this finding is arrived at is not known. Delhi is not an area where there is total prohibition. All that the medical report says is that the applicant had consumed alcohol. At the same time, the medical report categorically records that clinically the applicant was not under the influence of liquor. What is placed on record does not support the averment in the counter. There is no other record to show that he was under the influence of liquor. In any event this finding is not



supported by any evidence recorded at any enquiry in accordance with the principles of natural justice.

We have no doubt that in the reply the Deputy Secretary who asserts that he is fully conversant with the facts would not have stated any fact which is not supported by the record. Unfortunately that record is not placed before the Tribunal. Any such evidence gathered and finding recorded is certainly not based on any enquiry which even remotely satisfies the principles of natural justice. To say that a public servant is under the influence of liquor and he was involved in a series of incidents involving altercations with the Secretary, Delhi Gymkhana Club and Delhi Policemen (under influence of liquor) certainly attaches a stigma to a public servant. That, too, a finding that he was involved in altercations with the Secretary, with the Delhi Policemen Delhi Gymkhana Club and in a public place like the Bengali Market area under the influence of liquor is certainly not a compliment to an officer of the rank of Deputy Secretary to the Govt. of India. It is positively a stigma. The respondents further state that the incidents were widely published in newspapers. That is an independent fact they have mentioned. The 1d. counsel for the respondents tried to argue that what they have stated in their counter are only allegations made by the police and that those allegations received wide publicity in the Press; they are

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not the findings or accusations of the respondents themselves. We are unable to accept that the categorical statement that the applicant was involved in a series of incidents involving altercations with the Secretary, Delhi Gymkhana Club and Delhi Policemen under influence of liquor is stated only as an allegation of the Police or of any third party. What is stated is the statement of respondent in reply. Any such contention is demolished by their own further statement in the reply that "The decision to prematurely repatriate the applicant to his parent cadre was taken by the Government after carefully considering the reports received by the Government on these incidents, as well as various representations submitted by the applicant himself. Government are of the considered (Emphasis supplied) view that continuance of the applicant in Delhi on Central Deputation would bring further bad name to the Central Government". Any doubt lingering that what is stated earlier in that paragraph is only an allegation by the third party is cleared by these subsequent averments. The averment that on account of these incidents in which the applicant was involved in altercations with Delhi Police under the influence of liquor would bring bad name to the Central Government unmistakably implies that they

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have already brought a bad name to it and his continuance would bring further bad name. It was, therefore, decided without prejudice to any other action against him that he should be reverted to his parent cadre. This also further shows that while the Central Government has not decided either to take or not to take any further action, the acts of applicant which have cast a stigma on him and have brought a bad name to the respondents may well attract further disciplinary action. What can be safely said is that the respondents have not decided to drop further action; they have kept their options open. In the circumstances, we are clearly of the view that this averment in the counter shows that having considered the representation and the reports the respondents had come to the conclusion that the applicant had involved himself in altercations with the Secretary, Delhi Gymkhana Club and the Delhi Police under the influence of liquor in the club and at a public place. That certainly casts a stigma on the applicant. This finding is arrived at behind the back of the applicant without observing the principles of natural justice. The reversion is, therefore, punitive and cannot be sustained.

It was further argued that what is stated in the counter was only in reply to the averments in the

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application and that by itself cannot be taken as a finding. In this behalf reliance was placed on the judgment of the Allahabad High Court in S.RAZA ABBAS RIZVI V. STATE OF U.P. & ANOTHER (4) in which it was held:

"petitioner himself had alleged in the writ petition that his work and conduct were excellent, and, as such, there was no ground for sending him back to his parent department. It was in reply to this assertion that certain allegations have been made. Such allegations do not find place in the impugned order. They may have formed the background motive for deciding to send the petitioner back to his parent department, but they cannot in the circumstances be said to form foundation for the order and, as such, the decisions in K.H. Phadnis V. State of Maharashtra, 1971 (2) Services Law Reporter, 345 (SC) and Shri C.L. Raizada V. Delhi Administration, Delhi and others 1977 Labour Industrial Cases, 1988, are clearly distinguishable on facts."

We must notice firstly that the observations made therein are based on facts and circumstances of that case.

Further, we cannot agree that because the order is innocuous it cannot be said to be by way of punishment. Having regard to pronouncement of the Supreme Court in K.H. PHADNIS V. STATE OF MAHARASHTRA (1) where the order of reversion to the parent department was innocuous but was

4. 1987 (3) SLR 839.
1. AI R 1971 SC 998.

found to impose a stigma and by way of penalty, the Tribunal is entitled to ^{nay-} bound to tear the veil and go behind the order and consider whether it is really an innocuous order or by way of penalty or casts a stigma.

The facts and circumstances of the present case discussed above, in our opinion clearly establish that the foundation of the order is the conclusion reached by the respondents that the applicant had involved himself

in altercations with ^{the} Delhi Police ^{under the influence of} liquor. That finding attaches a stigma to the applicant.

That order must be held to be penal in nature.

It is argued that the penalties which may be imposed on a member of the All India Service are enumerated in Rule 6 of the All India Service (Discipline and Appeal) Rules, 1969. Explanation (vi) under Rule 6 of the said Rules lays down that:

"Replacement of the services of a member of the service whose services have been borrowed from a State Government at the disposal of the State Government shall not amount to penalty".

Therefore, the applicant cannot contend that the impugned order which merely reverts him to his parent cadre is by way of punishment. Reversion of an officer to his ^{parent} cadre is not one of the penalties enumerated under the said rules. The above explanation only states the

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lest, obvious loss in emoluments and status may be construed as a penalty. The explanation does not cover cases where the basis of the reversion or replacement is based on a finding that attaches a stigma. It is necessary to note that the Supreme Court in K.H. PHADNIS V. STATE OF MAHARASHTRA (1) was also dealing with a case of reversion to parent department from a post he had no right to hold permanently and from which the Govt. could always order reversion. Yet the Supreme Court declared:

"the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted." (Emphasis supplied).

What the Supreme Court has emphasised is that the court should not be guided by the innocuous wording of the order of reversion but whether the order is such that the person goes back to his post "without an aspersion against his character". The Supreme Court ordains a decision on the question whether the order is "a pure accident" -

1. AIR 1971 SC 998.

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of service" or "by way of punishment". Of course, such an innocuous order does not by itself and on the face of it cast an aspersion and is not a penalty. But that does not conclude the matter. The Court has not only to see whether it is a penalty, but has to go behind it and determine "whether it is by way of penalty". So viewed, we have no doubt in holding that it attaches a stigma and is by way of penalty.

In this context we may also take note of the fact that ordinarily tenure at the level of the Deputy Secretary is for a period of 4 years and only in exceptional cases where the public interest so demands, the tenure of an individual officer in the same post or any other post or class of post can be extended or curtailed with the concurrence of the Cadre Controlling Authority. From this also, it is clear that unless the respondents had come to the conclusion, that they did, the applicant would not have been ordinarily reverted to his parent cadre until the expiry of 4 years; only because the respondents came to the above conclusion they thought that the public interest demanded curtailment of his tenure. The fact which led to this conclusion is based upon an enquiry, if any, made behind his back offending all principles of natural justice. If no enquiry was made, the finding or conclusion arrived at by the respondents was arbitrary. For all these reasons that order is unsustainable and must be quashed.

We may, however, add that nothing said herein

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will preclude the respondents from reverting the applicant to his parent cadre on the expiry of his present tenure, or even before its expiry or even from taking such action as they deem fit after observing the principles of natural justice.

This application is allowed and the impugned order is quashed but in the circumstances with no order as to costs.



(Kaushal Kumar)
Member
23.9.1988.



(K. Madhava Reddy)
Chairman
23.9.1988.