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Central Administrative Tribunal, Allahabad.

Registration O.A.No.822 of 1987

Dr. Ghanshyam Krishna Shukla Applicant

Vs.

State of U.P. and another Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This petition under Section 19 of the Administrative Tribunals Act XIII of 1985 has been filed for quashing the punishment order dated 24.7.1987 passed by the respondent no.1 withholding his promotion including grant of selection grade till the date of his superannuation.

2. The applicant having been appointed as Deputy Superintendent of Police in 1956 was promoted to the cadre of Indian Police Service in due course and was confirmed in IPS w.e.f. 22.8.1978. He was posted as Sr.Superintendent of Police (for short SSP) Etawah w.e.f. 15.6.1983. District Etawah and the adjoining district Jalaun are dacoit infested districts. The gang of one Surendra Singh Tomar was operating in district Etawah at the time of the posting of the applicant, which was liquidated in Sept.1983 and its leader was shot dead in an encounter with the Police. After the death of Surendra Singh Tomar, one of his associates Jagdish Mallah had formed a new gang and it is alleged that in order to eradicate the said gang, Etawah police under the direction and guidance of the applicant had 12 encounters with the said gang within a period of 6 months and arrested one active lady Maharshra of his gang. It appears that river Jamuna serves as a natural boundary line between

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districts Etawah and Jalaun. On one bank of the river situates village Romai in district Jalaun and on the other bank lies village Asta in district Etawah. In the night of March 13/14, 1984, the gang of Lala Ram and Shri Ram (for short gang of Lalaram) committed a murder in village Asta. On 20.5.1984, the gang of Jagdish Mallah committed three murders in village Romai whereupon the SSP Jalaun reported the said incident to the Dy. Inspector General of Police (for short DIG) Kanpur Range, Kanpur vide his radiogram (copy annexure 1) dated 21.5.1984 and it was stated therein that it was also addressed to SSP Etawah and SSP Etawah was requested to alert the Police of bordering Police station of his district. The DIG Kanpur vide his radiogram dated 23.5.1984, copy annexure 2, directed the applicant to tighten vigilance on Etawah side. On 22.5.1984, one Sri Satya Deo Tripathi, Advocate and a leader of a political party had met the applicant and submitted an application signed by Parsuram of village Asta to him and requested for posting PAC at Asta as on account of dacoit activities the people of the village were not able to lift their grains from their fields. The applicant alleges that by his order noted on the application of Parsu Ram, he had directed the Station Officer Auraiya to post one Sub Inspector and three Constables and to arrange PAC patrolling from neighbouring village Sehuli. As the force of PAC was not available, the applicant had expressed his inability to post the same in the village and he had also given instructions on telephone to the Joint Superintendent of Police, who was incharge of Anti Dacoity Operations in the district. On account of the illness of his daughter, the applicant had applied for

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15 days leave and on receiving the intimation regarding its sanction, he proceeded to Bareilly on 25.5.1984 handing over the charge to the Joint S.P. Sri Ram Adhar. After his departure on 26.5.1984, the gang of Lalaram attacked the village Asta and committed the murder of 13 persons and set several houses on fire in which 2 persons were burnt alive. On finding the applicant responsible for this massacre, he was served with a charge sheet with letter dated 19.7.1984, copy annexure 3 by the Secretary to Government of U.P. containing the following imputation of charge :-

" While you were posted as Senior Superintendent of Police, Etawah during the period from 15.6.1983 to 8.6.1984, the dacoit gangs of Jagdish Mallah and Lala Ram and Shri Ram had created terror among the people on account of rivalry between the two gangs in the districts of Jalaun and Etawah, the later being within your jurisdiction. You did not take concrete steps to crush/contain activities of these two gangs. The gang of Lal Ram and Shri Ram committed dacoity in village Asta P.S. Auraiya, Distt. Etawah in the night of 13/14 March, 1984 murdered Parashuram Mallah and took away one muzzle-loading gun. Thereafter the gang of Jagdish Mallah committed murder of Munna Singh, Vishal Singh and Manoj Kumar Singh on 20.5.84 in village Rumai, P.S. Kuthond, District Jalaun which is situate across village Asta on the other side of river Yamuna. The SSP Jalaun flashed the message of commission of the said triple murder of Thakur Community vide his radiogram dated 21.5.1984. You however did not visit the area to analyse the movement of the gang which was likely to commit crimes by way of reprisal. On 22.5.1984, one Parash Ram s/o Mata Din, resident of village Asta P.S. Auraiya District Etawah met you and so did Sarva Sri Satya Deo Tripathi Kamta Pd. and Prem Krishna Chaudhary Advocate and they apprised you of the lurking danger and of reprisals and also gave an application to you informing you of the possible attack from Lala Ram and Shri Ram gang on this village, even then no concrete action was taken by you for the protection of the villagers or to counter the possible reprisals by dacoit gang. The gang of Lala Ram and Shri Ram attacked the said village Asta on 26.5.1984 and killed 13 innocent persons and set several houses on fire in which two persons were burnt alive. Inspite of sufficient information in advance you did not take adequate measures to protect the life and property of the villagers and counter the activities of the notorious gangs of dacoits which culminated in mass murder and loss of human lives and property. You are thus guilty of serious dereliction of duty and breach of rule 3(1) of the All India Services (Conduct)Rules, 1968"

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3. The applicant submitted explanation in reply to this charge sheet stating therein that he had taken all possible care to post the necessary Police force in village Asta and as he had no PAC, the same could not be posted and as the occurrence had taken place in his absence from the district, he could not be held responsible for the consequences. The applicant was also placed under suspension but the same was later on revoked and in the disciplinary inquiry conducted by Sri ~~S~~em Prakash, Inspector General of Police (for short IG) Kanpur under rule 8 of the All India Service (Discipline and Appeal) Rules (hereinafter referred to as the DA Rules), the applicant was not found guilty of the charges levelled against him but the inquiry officer had suggested that considering the circumstances of the applicant as they existed at the time of this occurrence and his responsibility, the applicant be warned to be more vigilant and active in future. The respondent no.1, however, did not agree with this recommendation of the inquiry officer and proposed the punishment of censure for the applicant and thereafter sought the advice of the Union Public Service Commission- respondent no.2 for imposing the said punishment vide letter, copy annexure 16. The respondent no.2 after going through the entire record of preliminary and disciplinary inquiry, recommended the penalty of withholding the promotion including the grant of selection grade till the date of superannuation of the applicant, which was accepted by the respondent no.1 and vide its impugned order dated 24.7.1987, the applicant was punished accordingly. Without going in appeal to the departmental appellate authority under the DA Rules, the applicant moved this petition challenging the validity of

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the impugned orders on the grounds that as the respondent no.1 did not disagree with the findings of the inquiry officer, no punishment including the punishment of censure could be imposed on him ~~as~~ under Rule 9(3) of the DA Rules, as such, there was no occasion for the respondent no.1 to seek the advice of respondent no.2 for imposing any penalty on the applicant. The recommendation of warning made by the inquiry officer is not a punishment under rule 6 and after finding the applicant not guilty of the charge against him even the recommendation of warning made by the inquiry officer was beyond his jurisdiction. The advice of the respondent no.2 sought by the respondent no.1 is, therefore, illegal and without jurisdiction and the impugned order passed on the recommendation and advice of the respondent no.2 is also illegal and contrary to the provisions of DA Rules. The applicant was not supplied with the copies of the documents required by him. The copy of the report of the preliminary inquiry was denied to him but the same was made available to ~~g~~ and considered by the respondent no. 2 in giving its advice, which is against the principles of natural justice and the applicant has been greatly prejudiced on account of not following the proper procedure by the inquiry officer and the respondents.

4. The petition has been contested on behalf of the respondent no.1 and in the reply filed by its Joint Secretary, Home Department, it has been stated that the gruesome incident of village Asta was ^{the} direct result of inaction of the applicant and his negligence to the duties as he had failed to provide necessary protection to the residents of village Asta despite request and on receiving timely information about the movement of the gang of Lalaram in

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district Etawah. The applicant did not exhaust the departmental remedy of appeal under the DA Rules and his petition was accordingly premature. The applicant was initially placed under suspension but subsequently the respondent no.1 took a lenient view and after consultation with respondent no.2, awarded him a minor penalty. The respondent no.2 is merely an advisory body and it was unnecessarily impleaded as party to his claim petition by the applicant. The inquiry officer had concluded that the charges levelled against the applicant are not proved but at the same time it is certain that he had full knowledge of the possible fear in the minds of the villagers of village Asta but he failed to pass orders for adequate action and ensure their compliance. It was his responsibility to direct the Addl. Superintendent of Police and the Circle Officer to ensure compliance of his order. The disciplinary proceedings against the applicant were taken in accordance with DA Rules and he was given adequate opportunity to defend himself. The relief sought by the applicant cannot be granted to him under the circumstances of the case and the petition is not maintainable. No reply was filed on behalf of the respondent no.2 nor anybody appeared on its behalf to make any oral submission.

5. In the rejoinder filed by the applicant, it was stated by him that he had taken all possible care to prevent any untoward incident in village Asta on receiving information from Satya Deo Tripathi Advocate and as he had no force of PAC for posting in the village and despite his repeated efforts in the past, he could not get the additional force from the DIG Kanpur, he was unable

to send any PAC force to Asta. It was also stated that the radiogram message flashed by SSP Jalaun on 21.5.1984 to the DIG Kanpur was not sent to him and he had no information regarding the rivalry between the gangs of Jagdish Mallah and Lalaram. He reiterated that the copies of necessary documents required by him were not supplied to him and he was thereby prejudiced in making his defence.

6. We have carefully considered the various contentions raised on behalf of the contesting parties before us and have also perused the necessary record. Much emphasis has been laid on behalf of respondent no.1 on the fact that the applicant rushed to the Tribunal with this petition without exhausting his departmental remedy and there cannot be two separate sets of rules- one for senior officers and one for low paid employees- in this respect and the petition filed by the applicant without filing a departmental appeal is not maintainable under the law. It is true that under sub-section (1) of Section 20 of the Administrative Tribunals Act XIII of 1985, a petition under Section 19 of this Act is not ordinarily to be admitted unless the departmental remedies are availed by the applicant. The sub-section has used the word 'ordinarily' and has granted a discretion to the Tribunal in proper cases to waive the condition of exhausting the departmental remedies to save the applicants from the resultant hardships. Further, the law by now has been well settled in this connection and the question of exhausting the departmental remedies loses its all importance as soon as the petition is admitted by the Tribunal. In the instant case, after due consideration of the facts stated by the applicant, the condition of exhausting the departmental remedy by the applicant was

waived by this Bench and the petition was admitted. It is now not open to the contesting respondents to question the validity of that order or the maintainability of the petition in the absence of his exhausting the departmental remedies.

7. It has been next contended on behalf of the respondent no.1 that the applicant has presented this petition in the form of an appeal, and it ~~can~~ ^{can} not to be considered by us as an appeal and as a tendency of ^{under the law} ~~utter~~ indifference towards their duties is ~~being~~ increasingly seen amongst the Police officers and ^{as such for} ~~due to~~ taking adequate steps to prevent this gruesome incident, the punishment awarded to him was very much called for, ^{As} there was no clear finding of the inquiry officer exonerating the applicant of the charges levelled against him, the procedure followed by the respondent no.1 in seeking the advice of respondent no.2 was fully covered under the rules and the applicant having failed to make out any case for interference by this Tribunal, his petition has to be dismissed.

8. Before we examine the legal aspects of this case, it seems necessary to examine its factual aspects. A single charge of showing serious dereliction of duty was framed against the applicant in the charge sheet. The learned inquiry officer, after going through the oral and documentary evidence produced before him prepared a detailed report wherein he had quoted the statements of all the witnesses almost in verbatim and examined the charge against the applicant in three parts.

At page 28 of his report, copy annexure 15, the inquiry officer has held that the first part of the charge that the gangs of Jagdish Mallah and Lalaram had created panic in districts Etawah and Jalaun and the applicant had not taken concrete steps to crush or contain their activities has not been proved. Considering the second part of the charge at page 29 of the report, the inquiry officer held that as no crime was committed by the gang of Lalaram before March 1984 in district Etawah, the applicant could not be held guilty of not taking steps to curb the activities of that gang.

9. After considering the remaining part of the charge, the inquiry officer held that it has been established by the material placed before him that on getting the radiogram message from SSP Jalaun, the applicant and other Police officers of the district had come to know about the incident as a result of which Sri Raj Bir Singh, Circle Officer Auraia had visited the place of occurrence (Ramai village). He further concluded that as the repeated encounters between the gang of Jagdish Mallah and Etawah Police is an indication of the fact that necessary steps were taken by the Etawah Police against the gang of Jagdish Mallah. He further held at page 32 of his report that it was proved beyond doubt that the application given by Parsuram was sent by the applicant to the Station Officer of the concerned Police Station for necessary action, ^{which} it was not taken by him as a result of which the Station Officer was reduced in rank in the departmental proceedings initiated against him. The inquiry officer further held at page 33 of his report that the application of Parsuram

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containing the orders of the SSP (the applicant) were received at the Police Station Agraia the same day and whatever compliance was to be made, was to be made by the Station Officer himself. Not only this, in the first fresh para at page 34 of his report the inquiry officer clearly exonerated the applicant by observing that after examining all the facts discussed above, the charge levelled against the applicant does not appear to have been established. After these observations and findings recorded by the inquiry officer, there was nothing left for further discussion but some observations made by the inquiry officer in the later part of this para and in the subsequent para created difficulty leading to the reference by the U.P. State to the U.P.S.C. for its advice. After observing that the charge levelled against the applicant does not appear to have been established, the inquiry officer further stated in his report that it is certain that the applicant had received the information about the probable terror in the minds of the residents of village Asta and he failed to pass suitable orders and ensure their compliance in this connection. It was his responsibility to inform the Addl.S.P. and the Circle Officer about his orders to ensure their compliance. The inquiry officer, however, again changed the line of his thinking and further observed in the same context that the responsibility has to be seen in the light that the SSP usually receives such applications and they are passed over to the subordinate officials for necessary action and it is difficult for the SSP to ensure the required action at his own level. He further observed that it was unfortunate that this serious incident was committed in

connection with this application otherwise, such occurrences do often take place in dacoit infested areas. Thus, despite the inconsistency in the approach of the inquiry officer, the first and the last sentence of the first fresh para at page 34 of the report clearly conclude that the imputation of charge against the applicant does not appear to have been established and it is only an unfortunate fact that the said serious incident occurred in respect of the application of Parsuram otherwise such incidents do take place very often in dacoit infested areas. In the second fresh para at page 34, the inquiry officer, however, chose to observe that in his opinion, considering the circumstances and the responsibilities of the applicant, he may be warned for being more vigilant in taking suitable action in future.

10. We will further like to point out that in the last para at page 33 of his report, the inquiry officer had mentioned that it is noteworthy that the accused officer was granted leave on 15.5.1984 and had proceeded on leave in the afternoon on 25.5.1984 and as such, his responsibility was reduced to some extent. Keeping this thing in mind and after recording the findings and recommendations in respect of article of charge against the applicant the inquiry officer thought it expedient to advise the State Government that the administration should also consider whether it will be necessary to warn the concerned Circle Officer and the Addl.SP for future. This advice of the inquiry officer seems to have gone unheeded.

11. Annexure 16 is the copy of the confidential letter dated 17.12.1986 of the respondent no.1 addressed to the Secretary

of the Union Public Service Commission for the advice of the Commission under Rule 9(3) of the DA Rules. Para 1 of this letter states that the incident was immediately inquired into by the DIG Kanpur who found that in spite of having prior information of the lurking danger, Sri Shukla did not take adequate measures to protect the life and properties of the villagers and failed to counter the activities of the notorious gang of dacoits. In our opinion, this is not the ^{or the conclusion arrived at} categorical finding ~~by~~ of the inquiry officer and he had made these observations with the clear finding preceding the said observations in the beginning of the relevant para at page 34 of the report that after seeing all facts, the charges levelled against the applicant have not been proved and were followed by the concluding remark that the responsibility of the senior SSP has to be judged in the light of the fact that such applications (as given by Parsuram) are often received by the SSP and are marked to the subordinate officers to ensure the necessary action at their level and it was unfortunate that this serious incident took place in respect of this letter otherwise, such occurrences often do take place in dacoit infested areas. Thus it is not correct on the part of State of U.P. to mention in this letter that the DIG had found the applicant guilty of not countering the activities of the notorious gang of dacoits. In the second para of the letter, annexure 16, the State of U.P. mentioned that after examining the report it decided to place the applicant under suspension and to institute a formal departmental proceeding against him. The letter further mentions that after giving a careful consideration to the pleas offered in his written statement, the State decided to reinstate the applicant. In para 5 of the letter, the respondent no.1 further mention-

ed that it has carefully examined the report of the inquiry officer and does not agree with the conclusion that the applicant be merely warned. Having due regard to the report, the State Government is of the opinion that the penalty of censure be imposed on him. The contention of the applicant is that according to para 5 of this letter, the Govt. of U.P. did not agree with the conclusion of the inquiry officer so far as it relates to the administration of a warning to him ^{as} and in its opinion that punishment of censure was called for and it accordingly sought the advice of the respondent no.2. These contentions of the applicant appear to have much force.

11. Rule 9 of the DA Rules prescribes the procedure to be followed by the disciplinary authority after receiving the report from the inquiry officer. Sub-paras (2) and (3) of this rule, which call for a close scrutiny in this case, are reproduced below :-

"9. Action on the inquiry report-(1)..."

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clause (i) to (iv) of rule 6 should be imposed on the member of the Service it shall notwithstanding anything contained in Rule 10, make an order imposing such penalty:

Provided that, in every case, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the member of the Service."

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The letter addressed by the respondent no.1 to the respondent no.2 for its advice in respect of the proposed penalty of censure to be imposed on the applicant does not show that the respondent no.2 had disagreed with the findings of the inquiry officer on any article of charge and its disagreement was only with regard to the conclusion about the administration of warning proposed by the inquiry officer. Had the warning been one of the penalties prescribed by rule 6 of the DA Rules to be imposed on the delinquent members of any All India Service, the things could be a little different. The warning is not one of the 4 minor penalties or 5 major penalties prescribed by rule 6. So in case, the respondent no.1 did not agree with the conclusion of the inquiry officer to administer warning to the applicant and any penalty prescribed under rule 6 was deemed necessary to impose on him, it was the duty of the respondent no. 1 to record its reasons for its disagreeing with the findings of the inquiry officer on the article of charge against the applicant. Sub-rule (3) comes into play only if there is any finding of guilt whether recorded by the inquiry officer himself or by the disciplinary authority on its disagreement with the inquiry officer and if there is no/ finding of guilt, the question of imposing a penalty on the delinquent will not arise. It has, therefore, been rightly contended that without recording a finding of guilt against the applicant under sub-rule (2), it was not open to the respondent no.1 to propose any penalty for the applicant and to transmit the record to respondent no.2 for its advice. The advice sought by the respondent no.1 and the advice given by the respondent

no.2 both are thus against the very scheme and intent of rule 9 of the DA Rules and as both ^{the respondents} exercised their jurisdiction which was legally not vested in them under the facts and circumstances of this case, the advice tendered and the decision based thereon are illegal and void and the penalty awarded to the applicant, therefore, cannot be sustained.

13. The learned counsel for the applicant took pains to take ~~use~~ through the evidence on record to suggest that the applicant had taken all possible care to maintain law and order and crush the criminal elements in his district but for want of adequate PAC, he was unable to post such force in village Asta on receiving the information from Parsuram. It was also contended by him that the report of the preliminary inquiry made in respect of the charge against the applicant was denied to the applicant as appears from the report of the inquiry officer but the same was considered by the respondent no.2 while tendering its advice to the respondent no.1 and it was wrongly taken into consideration that the applicant had information about the rivalry between two gangs of Jagdish Mallah and Lalaram operating in districts Jalaun and Etawah. He also laid stress on some other irregularities committed during the course of disciplinary proceedings against the applicant. We have already held above that the respondent no.1 called for the advice of respondent no.2 without any justification or jurisdiction and the advice given by the respondent no.2 is, therefore, illegal and void and as such, we do not see it necessary to go into the merits of the case of the applicant or the legality of the advice tendered by respondent no.2 otherwise. In our opinion, a Court qua Tribunal has not to sit in appeal against the findings of the inquiry officer recorded in a disciplinary proceedings and has not to exercise the power of reappraisal of evidence

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unless the findings are perverse. As we find no finding of guilt against the applicant in the report of the inquiry officer and no finding of the respondent no.1 under rule 9(2) of the DA Rules disagreeing with the finding of "not guilty" recorded by the inquiry officer in favour of the applicant, we refrain from entering into any discussion on the merits of the case of the applicant as the same is not called for and we have already held above that the penalty awarded by the respondent no.1 to the applicant is illegal and void.

14. The petition is accordingly allowed and the impugned order dated 24.7.1987 imposing the penalty of withholding promotion including selection grade on the applicant is hereby set aside. The reference made by the respondent no.1 to the respondent no.2 for seeking its advice on the question of penalty and the advice tendered by the respondent no.2 are also set-aside. There will be no orders as to costs.

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MEMBER (J)

Dated: 9th Feb. 1988
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