

**Rajender Kumar Vs. UOI and Others**

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**Court :** Delhi

**Decided On :** Jul-25-2016

**Judge :** Pradeep Nandrajog & The Honourable Ms. Justice Pratibha Rani

**Appeal No. :** W.P.(C) No. 213 of 1998

**Appellant :** Rajender Kumar

**Respondent :** UOI and Others

**Judgement :**

**Pratibha Rani, J.**

1. The petitioner who was posted as SI/Executive at CISF Unit CCL Dhori (Bihar) has been litigating for last about two decades shuttling between Central Administrative Tribunal and Delhi High Court with a prayer for quashing of penalty of removal from service .

2. Initially the writ petition was filed before this Court and registered as W.P.(C) No.213/1998. Thereafter pursuant to the order dated March 04, 2009 the file was sent to Central Administrative Tribunal.

3. Thereafter in T.A. No.887/2009 Central Administrative Tribunal recorded that counsel for parties were ad idem that the jurisdiction to decide this matter shall be exclusively with the High Court.

4. On January 25, 2010 CM No.938/2010 under Section 151 CPC was allowed and W.P.(C) No.213/1998 was called back from Central Administrative Tribunal for listing the same before Roster Bench.

5. The petitioner Rajender Kumar who was posted as SI/Executive at CISF Unit CCI Dhori (Bihar) has impugned the order dated February 15, 1997 whereby the Disciplinary Authority in exercise of the powers conferred under Rule 31(b) of CISF Rules, 1969 (Old) imposed the penalty of removal from service .

6. The appeal preferred by him before DIG/CISF was dismissed on April 19, 1997.

7. In brief, the facts are that in respect of incident dated August 24, 1996 when petitioner alongwith three constables namely Ct.Hawa Singh, Ct.Madhusudan and Ct.N.C.Solanki left Coy. office at 19:25 hrs for patrolling in the area and had some confrontation with the civilians from the near-by Kaaripani Basti wherein Ct.Hawa Singh member of the patrolling party received serious injuries, an inquiry was ordered to be initiated.

8. Perusal of the record of disciplinary proceedings, which has been submitted by the respondents for perusal of the Court, reveals the following facts:-

(i) On August 22, 1996 the petitioner announced at the time of roll call that STF will be constituted and the names of members of the force forming STF would be disclosed later on as per the order of the Commandant.

(ii) As per Ex.2 dated August 23, 1996 Ct.Madhusudan, Ct.Hawa Wingh and Ct.N.C.Solanki were detailed by the Sub-Inspector for the STF duty.

(iii) On August 24, 1996 at 19:25 hrs GD was recorded by the Coy.Commander Inspector/Exe. K.Tuti (PW1) about departure of SI/Exe.Rajender Kumar, Ct.Hawa Singh and Ct.N.C.Solanki for patrolling the area.

(iv) In respect of the incident that had taken place between the patrolling party and the civilians of nearby Basti, another GD was recorded at A Coy. at 21:15 hrs by PW-1 Inspector/Exe. K.Tuti which is extracted hereunder:-

G.D. Extract of A Coy.

Sl.No.	Date and Time	Extract	Events	Sig.
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As Ref.  
G.D.No.12,  
1925 dated  
24.8.96 SI/Exe.  
Rajender Kumar  
alongwith  
Ct.Hawa Singh,  
Ct.Madhusudan,  
Ct.N.C.Solanki  
were left for  
area PTL At  
about 2115 hrs  
on arrival  
SI/Exe.  
Rajender Kumar  
informed me  
that after  
checking NSD  
Coal Depot,  
Karipani duty  
post, they  
reached near  
Karipani Nala  
Bridge at about  
2015 hrs 05  
civilians were  
sitting there.  
They asked to  
the PTL party  
where they are  
going.  
SI/Exe.Rajender  
Kumar replied  
them that they  
are going area  
PTL who are  
you to ask. After

(v) In respect of the said incident Inspector/Exe. K.Tuti also sent a report to the Commandant, CISF, CCL Dhori (Bokaro) for further action, contents of which are exactly identical to the contents of GD dated August 24, 1996 recorded at 21:15 hrs.

9. In respect of incident, investigation was also carried out by local police. Ct.Hawa Singh who was admitted in the hospital was conscious and fit to make a statement to the local police. His statement was recorded by ASI Vidya Sagar Singh, PS Chanderpura Camp Regional Hospital, Dhori on the same night and is to the following effect:-

FARD BIAN of Const. Hawa Singh No. 902294572 son of Hardyal Singh at Karipani A Company, P.S. Chanderpura Distt. Bhokaro. Recorded by ASI V.S. Singh of Chanderpur Police Station, Camp Regional Hospital Dhori on 23:45 hrs. Dhori, Regional Hospital Bed No. 1.

My name is Hawa Singh s/o Hardayal Singh, I am Const. In CISF No. 902294572 residing at A Coy Karipani Camp P.S. Chanderpura District Bhokaro. Today on 24-8-96, Saturday I am giving my statement before I/C P.P. Makauli P.S. Chanderpura from Dhori Regional Hospital Cabin No. 1, Bed No. 1, that today about 1930 hrs. I alongwith SI/Exe. Rajender Kumar Sharma, Const. Natwar Lal Solanki and Const. Madhusudan Singh left for area patrolling in A Coy. Area by foot. After checking NSD Karipani duty post we were proceeding towards NSD new Incline MAKULI at about 2015 hrs., as soon as we reached near Karipani Nala bridge five persons were sitting and talking among themselves. Asked us as where are you going. We told them that we are going for area patrolling and who are to ask. There was hot discussion on this and on hearing the noise about 30/40 peoples gathered there. We ran back towards Coy Line. They started pelting stones. One stone hit my forehead and I fell down. My colleague ran away. Then they hit me with lathi and Gandasa on my head and injured me seriously. Due to the noise more people started coming from camp then they ran inside the basti. I don t know any body by name but I will identify if they come infront of me.

This is my assertion that basti dwellers had attacked me with intention to kill.

This is my statement. I have signed it after reading and hearing, it being read over to me and finding it correct. My officers and colleagues took me to the regional hospital where my treatment is going on.

10. Case FIR No.65/1996 under Sections 147/148/149/323/324/337 IPC, PS Chanderpura was registered pertaining to the said incident. However, outcome of the said case has not been disclosed by either side.

11. As the Commandant of the Unit proposed to hold an inquiry into the entire incident, statement of Article of Charge (Annexure-I), statement of imputation of misconduct (Annexure-II) alongwith list of documents and the list of witnesses proposed to be examined to prove the said charge was served on the petitioner on October 01, 1996. The petitioner was also called upon to submit his representation within ten days and inform whether he desired to be heard in person, communicating that the inquiry shall be conducted only in respect of the charges denied by him.

12. The petitioner submitted his representation dated October 04, 1996 narrating the incident as under:

(i) The patrolling party headed by him left on August 24, 1996 at about 19:30 hrs in uniform and patrolling was on foot due to non-availability of the vehicle as ordered by Coy.Commander.

(ii) During patrolling when they reached near Kaaripani Nala Bridge, five civilians sitting there talked to them rudely asking where they were going.

(iii) They were abusing CISF for forcibly occupying Government quarters and restrictions imposed on carrying coal freely and they continued abusing CISF in filthy language.

(iv) On hearing the noise, 30-40 persons emerged from Kaaripani Basti and started pelting stones on the patrolling party.

(v) He tried to control the aggression but fearing mob fury, ultimately decided to leave the place. He asked his team members to run towards A Coy. Line.

(vi) On reaching there, he found Ct.Hawa Singh missing hence immediately informed A Coy.Commander Inspector/Exe. K.Tuti.

(vii) He alongwith Inspector/Exe.K.Tuti and other jawans went in search of Ct.Hawa Singh.

(viii) Ct.Hawa Singh was brought to the Coy. Line in injured condition from near Kaaripani Nala Bridge and immediately sent to Regional Hospital, Dhori.

13. Not satisfied with the response given by the petitioner herein, disciplinary proceedings were initiated against the petitioner with the following Articles of Charge:-

The following articles of charges have been framed against No. 934460015 SI/Exe Rajender Kumar of A Coy CIST Unit CCL Dhori Bokaro, Bihar vide Comdt. CISF Unit CCL Bihar memorandum No. V-1-15014/CIST/CCL/Ad.III/96-716 dated 30-09-96.

#### ARTICLE OF CHARGE I

Gross indiscipline and misconduct in that No. 934460056 SI/Exe Rajender Kumar of CISF Unit CCL Bihar, Dhori Area A Coy while functioning as Sub-Inspector/Exe. Went for area patrolling at about 1925 hrs. on 24-08-96 in civil dress with No. 942208811 Const. Madusudan, No. 942295179 Const. Solanki Natavarlal Chhagan Lal and No. 902294572 Const. Hawa Singh. He entered the Karipani Basti with above personnel and went to liquor bhatti unauthorisedly.

#### ARTICLE OF CHARGE II

Gross indiscipline and misconduct in that No. 934460015 SI/Exe. Rajender Kumar of CISF Unit CCL Dhori Area ( A Coy.) Bihar picked up quarrel with civilian inside Karipani basti near liquor bhatti at about 2000 hrs on 24-8-96 where No. 902294572 Const. Hawa Singh was assaulted by the civilians. Thereby tarnishing the image of CISF in the eyes of public Const. Hawa Singh sustained serious injuries and was admitted to Regional Hospital Dhori for treatment.

14. As per Annexure-III containing list of documents to prove the Articles of Charge against the petitioner, GD entry No.4 dated August 24, 1996 of A Coy. and report submitted by Coy. Commander A Coy. CCL Dhori were proposed to be proved.

15. The witness proposed to be examined were:

(i) Coy. Commander A coy.

(ii) No.82360016 Insp./Exe.S.Bhagat

(iii) No.724480210 HC/GD Giriraj Singh (BHM) (

iv) No.942298811 Const.Madhusudan

(v) No.942295179 Const.Solanki Natvarlal Chhaganlal

(vi) No.902294572 Const.Hawa Singh

(vii) Any other witnesses, if required by the EO during the course of DE.

16. Inspector/Exe. B.K.Yamuna was appointed as Inquiry Officer.

17. The Coy.Commander Inspector/Exe. K.Tuti was examined as PW-1, Insp./Exe.S.Bhagat was examined as PW-2, HC/GD Giri Raj Singh (BHM) was examined as PW-3, Const.Hawa Singh was examined as PW-4 and HC/GD Iswar Das was examined as PW-5.

18. Ct.Madhusudan and Ct.N.C.Solanki who were members of the patrolling party were not examined recording that both these constables could not be examined as they were overstaying leave.

19. PW-1 Inspector/Exe. K.Tuti the Coy. Commander and PW-4 Ct.Hawa Singh are the material witnesses for the reason that departure entry in respect of the patrolling party has been made by Inspector/Exe. K.Tuti, the incident was first reported to him by the petitioner, Ct.Hawa Singh was rescued from the place where he was lying in injured condition with the help of petitioner and other members of the force by Inspector/Exe. K.Tuti. Incident was recorded in GD and

incident report was also sent by Inspector/Exe.K.Tuti

20. PW-1 Inspector/Exe.K.Tuti made statement to the following effect:-

Statement of No. 753250053 Inspector/Exe Kalyan Tuti Coy. Commander of a Coy. CIST, Unit CCL, Dhori.

I No. 753250053 Insp/Exe Kalyan Tuti am posted in a company as Company Commander since Jan, 1996. On 24-8- 96 at about 1925 hrs. SI/Exe Rajender Kumar told me that he alongwith Cont. Hawa Singh, Const. N.C. Solanki and Const. Madhusudan were proceeding for NSD area for patrolling, so necessary entry be made in the General Dairy of the company. After that at about 2115 hrs. when I was sitting in the Coy. line ground then SI/Exe Rajender Kumar came to me and told that when they were going towards New Incline after petrolling NSD Area and when they reached near Karipani Nala bridge they saw four five persons were sitting there. Then those persons sitting there asked SI/Exe Rajender Kr. As where they were going. On this S.I. Exe Rajender Kumar told them as who were they to ask. On this thing verbal exchange between us and them, then those persons called others and they were about 40 in strength. After seeing them we people (SI/Exe Rajender Kr. And other force members) ran towards a Coy. line to save their lives. When SI/Exe Rajender Kumar reached at a copy line he saw that Const. Hawa Singh was not with them. This is what was told by SI/Exe Rajender Kumar. After that I alongwith 10/12 persons from my Coy proceeded towards Karipani Bhasti. When I reached near Karipani Nala in dark then I found that Const. Hawa Singh was lying on the ground in unconscious condition and about 20/22 civil persons were standing around him. Thereafter I ordered my jawans to take Const. Hawa Singh on their arms to a coy line and they did so. But in the mean time some forced members proceded beyond therefore I went after them so that there was no untoward incident. In the mean time 20/22 civilians had runaway from there. After that alongwith other Force members I came back to a coy line then I got Jeep from Hq. Coy and immediately sent Const. Hawa Singh in the Regional Hospital Dhori. This is my statement which I have given my free will, heard, read, understood and I have signed it in the right mental balance.

21. PW-4 Ct.Hawa Singh who was member of patrolling party and injured in the incident made statement to the following effect:-

Statement of No. 902294572 Const. Hawa Singh of A Coy. CISF Unit CCL Dhori, (PW-6)

I, No. 902294572 Const. Hawa Singh am posted in A Coy, CISF Unit, CCL Dhori, since Jan. 1996. On 24-8-96 in the night at 1930 hrs. I alongwith SI/Exe. Rajender Kr. Const. N.C. Solanki and Const. Madhusudan left for area patrolling from the company line. Firstly after checking NSD Coal depot when we were going towards NSD New Incline then Rajender Kumar Sahib asked from where you burn all this coal. Do you have coal-card. Then one boy said he shall call the owner. In the meantime it was seen that 10-15 persons reached there and started shouting and abusing and started to pelt bricks and stones. Thereafter some more men gathered there and then SI/Exe Rajender Kumar, Const Madhusudan and Const. N.C. Solanki ran away from there and I was surrounded by those persons. After that SI/Exe Rajender Kumar, Const. Madhusudan and Const. N.C. Solanki alongwith other members of the force reached there and sent me to regional hospital Dhori in injured condition.

This is my statement which I have given by my will, read, heard, understood and after understanding I have signed in the right mental balance.

22. The Inquiry Officer has put eight questions to PW-1 Inspector/Exe. K.Tuti and twelve questions to PW-4 Ct.Hawa Singh which cannot be termed as clarificatory in nature.

23. PW-2 Inspector/Exe. S. Bhagat stated about hearing some noise when he was sitting in the verandah of Headquarter Coy. Line on 24-08-1996 at about 2010 hrs. he sent Head Constable Giriraj Singh to go to Karipani Basi with two-three force members to find out reason for the noise coming from the Karipani Basi side. In the meantime the petitioner Rajender Kumar came from outside and when PW-2 asked him about the reason for noise he stated that two-three thieves had come to the basti and noise was possibly due to that. Roll call was taken and all except those on duty were found present. When BHM and other force members returned

to the Coy. Line on being questioned BHM Giriraj Singh informed that Madhusudan and N.C. Solanki were running from Karipani basi side and about 20-25 civilians were running after them with brick and stone and that on seeing BHM and other force members the civilians ran away and the Constable Madhusudan and N.C. Solanki went towards their Coy. Line.

24. When questioned by the Inquiry Officer having any knowledge about the incident on 24-08-96, he said that on that date at about 2115 hrs. one Constable whose name he was unable to remember came and informed that Coy. Jeep was required for taking Const. Hawa Singh to hospital. When he made further inquiry about the incident the Const. informed that Const. Hawa Singh had gone for patrolling and had been given beating by the civilians and had received serious injuries then he gave Coy. Jeep (BPM 1612).

25. PW-3 Head Constable GD (BHM) Giriraj Singh stated that he was directed by PW-2 to find out the reason for the noise coming from Karipani basti side. He along with three force Jawans went to the basti side and saw 15-20 civilians with brick and stones, running and shouting in loud voice thief-thief (chor-chor). On seeing them they returned. In the meantime Constable N.C. Solanki and Constable Madhusudan were running towards A Coy. and he also returned with other jawans and roll call was taken. All except those on duty were found present. PW-3 has also stated that after some time he found that A Coy. person who had gathered in the Coy. Line and were talking about the Jawans being beaten by basti dwellers and they wanted to teach them lesson. He counselled them to make them calm down.

26. PW7 Head Constable/GD Ishwar Dass produced the extracts of GD entries recorded on 22-08-1996, 23-08-1996 and 24-08-1996 as PW7/Ex.1. Regarding the incident he stated that on 24-8-96 at about 2015 hrs. when he came to the Coy. Line for detailment duty he saw force members running outside the Coy. Line along with Coy. Commander saying that Const. Hawa Singh has been beaten by the basti dwellers. He also ran behind them and saw that Const. Hawa Singh was lying on the ground in injured condition. As per the order of the Coy. Commander (PW-1) Const. Hawa Singh was lifted by 4-5 constables and brought to the Coy.

Line and then sent to the Regional Hospital Dhori by jeep.

27. After noting the gist of statement of PW-1 Inspector/Exe.Kalyan Tuti, PW-2 Inspector/Exe. S.Bhagat, PW-3 HC/GD Giri Raj Singh, PW-4 Ct.Hawa Singh and PW-5 HC/GD Iswar Das, in the report the Inquiry Officer has noted undisputed facts as under:-

Undisputed Facts:

i) SI/Exe. Rajender Kumar while went for patrolling duty with other 3 Constables was in civil dress as per statement of PW-II Insp./Exe. S.Bhagat PW-IV Const.Hawa Singh and CW-I ASI/Exe.S.S.Sundaram.

ii) The patrolling party led by SI/Exe.Rajender Kumar (CO) entered inside the Karipani Basti as per statement of PW-IV Const.Hawa Singh, who was also a member of the patrolling party.

iii) The charged official and others after entering the Karipani Basti picked up quarrel with the civilians near liquor Bhatti. When the civilians became violent SI/Exe. Rajender Kumar (CO) could not control the situation and ran away leaving behind Const. Hawa Singh, as per statement of PW-IV Const.Hawa Singh.

iv) The civilians surrounded Const.Hawa Singh and he was beaten by them.

v) Const.Hawa Singh was hospitalised since he sustained serious injury as per statement of all the PWs.

28. Thereafter he proceeded to discuss the evidence on Articles of Charge and returned the findings as under:-

Discussion of Article of Charge-I

On 24-08-96 at about 1925 hrs. SI/Exe. Rajender Kumar with Const.Madusudan, Const.S.N.Chhagan Lal and Const. Hawa Singh went for area patrolling in civil dress. Const. Hawa Singh has categorically stated that all the personnel were in civil dress while proceeding for area patrolling. Insp/Exe.S.Bhagat and ASI/Exe.S.S.Sundram have also disclosed the fact that they have seen

SI/Exe.Rajender Kumar in civil dress while he was running towards HQrs. Coy after the incident took place on that day. Insp./Exe.S.Bhagat categorically stated in his statement that when he heard the halla, he saw SI/Exe. Rajender Kumar came to HQrs. Coy. Line and asked him to go to his Coy. and to take the surprise roll call. As per circumstantial evidences, SI/Exe. Rajender Kumar went to his A Coy. and put on his Uniform and then met with Insp./Exe.K.Tuti. Hence PW-I K.Tuti had seen him in uniform. The patrolling party led by SI/Exe.Rajender Kumar (CO) entered inside the Karipani Basti and went to liquor bhatti unauthorisedly as is proved from the statement of PW-IV Const. Hawa Singh. The charged official was not required to enter inside the Karipani Basti during his are patrolling.

### Discussion of Article of Charge II

After entering inside the Karipani Basti, the patrolling party led by SI/Exe.Rajender Kumar (CO) went to the house of a civilian who was having a liquor bhatti and unnecessarily involved in altercation with him over the issue of Coal. Statement of PW-IV who was also a member of the patrolling party is very clear about the above facts. The civilians provoked and pelted stones/bricks and the charge official failed to control the situation and ran away from the place. But. Const. Hawa Singh PW-IV was caught hold by the civilians and badly assaulted. He sustained serious injury and later admitted into Regional Hospital, Dhori as evident from the statements of all the PWs, CWs and also by the charged official in his defence.

### Findings:

In view of the above discussions and taking into account the statements of all the PWs, CWs and defence statement of the charged official and all the exhibits and other connected records adduced during the course of Departmental Enquiry, I find that the article of Charge I and II levelled against No.934460015 SI/Exe.Rajender Kumar vide Memorandum No.V-15014/CISF/CCL/Ad-III/96-716 dated 30.09.96 STAND PROVED without any iota of doubt.

29. The Disciplinary Authority concurred with the report of Inquiry Officer and imposed the penalty of removal from service .

30. Learned counsel for the petitioner has submitted that the incident with the civilians is not disputed by the petitioner but there was no material available before the Inquiry Officer to hold the petitioner guilty of the two charges framed against him. Learned counsel for the petitioner has drawn the attention of this Court to the statement made by Ct.Hawa Singh at different stages i.e. before the police on the same day and then before the Inquiry Officer. .

31. Another contention raised on behalf of the petitioner is that the other witnesses examined during the inquiry proceedings have made contradictory statements in respect of the incident and had been introduced later on. Highlighting that the two other team members of the patrolling party were not examined without any satisfactory explanation, he submitted that the impugned order being illegal, needs to be set aside.

32. On behalf of respondents, it has been submitted that there is sufficient material on record to establish that the petitioner SI/Exe. Rajender Kumar first went to his room to change the uniform and then reported the matter to Coy.Commander Inspector/Exe.K.Tuti. It has been further submitted that in view of the statement of Ct.Hawa Singh that they all were in civil dress and had entered the house of a civilian in Basti near liquor bhatti in itself is sufficient to prove the misconduct. Learned counsel for the respondent urged that this Court in exercise of writ jurisdiction cannot appreciate the evidence as an appellate authority, hence the writ petition may be dismissed.

33. Before we proceed further a serious doubt arises about capability and competency of the Inquiry Officer in grasping the facts, appreciate the evidence and understand the distinction between disputed facts and undisputed facts as well the scope of his power as an Inquiry Officer to question a witness.

34. The undisputed fact noted down above by the Inquiry Officer that all the members of the patrolling party were in civil dress is infact a disputed fact. PW-1 Inspector/Exe.K.Tuti who had made departure entry in respect of the patrolling party and thereafter recorded DD at 21:15 hrs in respect of the incident and sent the incident report has not recorded or stated about the patrolling party leaving in civil dress. Even in reply to the question put by the Inquiry Officer, PW-1

Inspector/Exe.K.Tuti has specifically stated that the petitioner was in uniform. PW-4 Ct.Hawa Singh in his statement made before the police immediately after the incident has nowhere stated that they were in civil dress at the behest of the petitioner. PW-1 Inspector/Exe.Kalyan Tuti, PW-2 Inspector/Exe. S.Bhagat, PW-3 HC/GD Giri Raj Singh and PW-5 HC/GD Iswar Das had not seen Ct.Madhusudan and Ct.N.C.Solanki running towards Coy. Line in civil dress. What formed basis of Article of Charge-I on the petitioner cannot be detected from the file containing disciplinary proceedings.

35. The second undisputed fact recorded is about the patrolling party entering in the Basti. But Ct.Hawa Singh in his version before the police in FIR No.65/1996 under Sections 147/148/149/323/324/337 IPC, PS Chanderpura recorded same night at 23:45 hrs has nowhere stated that they entered the house of any civilian in the Basti. Rather the place of incident was stated to be near the Bridge Kaaripani Basti and he had been rescued by the Coy.Commander and other members of the force from there.

36. The third undisputed fact recorded is that the patrolling party picked up quarrel with the civilians near liquor bhatti, inability of the petitioner to control the situation, running away from their leaving behind Ct.Hawa Singh in injured condition. This is also contrary to the record. In his statement in FIR No.65/1996 under Sections 147/148/149/323/324/337 IPC, PS Chanderpura Ct.Hawa Singh has specifically stated that when the petitioner asked them to run away from there to save their lives, while he was running, a stone hit on his forehead and he fell down. When all the four members of the patrolling party were running, lapse on the petitioner could be limited to the extent that he could not notice Ct.Hawa Singh falling down but immediately when he reached the Coy.Line, on not finding Ct.Hawa Singh, he reported the matter to the Coy.Commander and immediately accompanied him to the spot with other members of the force in search of Ct.Hawa Singh Ct.Hawa Singh was found lying injured at a dark spot and rescued and was from being physically lifting by some jawans. The petitioner alongwith Inspector/Exe.K.Tuti Coy.Commander and others rescued Ct.Hawa Singh immediately and none of the witnesses had stated that Ct.Hawa Singh was rescued from near liquor bhatti in the Basti.

37. Another undisputed fact recorded is that civilians surrounded Ct.Hawa Singh and he was beaten by them is not in consonance with the first version given by Ct.Hawa Singh before the local police immediately after the incident. Ct.Hawa Singh in his statement before the police has stated that on August 24, 1996 he alongwith SI/Exe.Rajender Kumar, Ct.N.C.Solanki and Ct.Madhusudan left for patrolling on foot in the A Coy. Area. After checking NSD new Incline Makuli at about 20:15 hrs. when they reached near Kaaripani Nala Bridge, they found five persons sitting there. Those person asked them as to where they were going and they told them they were going to area patrolling and who were they (the five persons) to ask. At that time there was some hot discussion and on hearing the noise about 30-40 persons gathered there. They ran back towards Coy. Line and that time those people pelted stones on them and one stone hit on his forehead due to which he fell down and his colleague ran away. Those persons hit him with lathi and gandasa on his head due to which he received serious injuries.

38. It may be noted here that in reply to the question No.10 asked by the Inquiry Officer as to whether he had given any written or oral information to the senior officers in his defence for a legal action, he has replied that he had never given any written or oral information to anyone.

39. Thus, in respect of the incident with the civilians on the night of August 24, 1996 the Inquiry Officer had the eye witness account of Ct.Hawa Singh only. It is noteworthy that during his examination before the Inquiry Officer he has not stated about the patrolling party leaving in civil dress or going to the Basti near liquor bhatti or entering the house of some civilian. Rather he has stated that at the time of incident, the patrolling party after inspecting the NSD Coal Depot was proceedings towards NSD New Incline when the petitioner asked someone as to from where he had got the coal and whether he was having card. On this, the said person left for calling his employer and immediately thereafter some persons came and started pelting brickbats and stones and they started running towards Coy. Line. One stone hit on his forehead and he fell down and rescued by the petitioner Rajender Kumar and some other members of the force. He did not state of being left behind in injured condition by the petitioner.

40. Since the Disciplinary Authority accepted the report of Inquiry Officer and imposed the penalty of removal from service , the petitioner preferred an appeal which has also been dealt with in a mechanical manner without examining the documents and the testimony of witnesses as well the role of the inquiry office while conducting disciplinary proceedings.

41. The grounds on which a party can seek judicial review are :

(i) Illegality

(ii) Irrationality

(iii) Procedural impropriety.

42. What constitutes illegality can be illustrated by the acts such as acting without jurisdiction, non-compliance of statutory provisions, nonapplication of mind, acting mechanically, ignoring relevant facts, and taking into account irrelevant considerations. The concept of irrationality is derivative of Wednesbury unreasonableness. Procedural impropriety can be inferred if principles of natural justice have violated, denial of reasonable opportunity to defend and if the charge is vague.

43. Now the question arises whether this Court in exercise of its power of judicial review can re-appreciate the evidence. In the decision reported as (2004) 4 SCC 714 State of U.P. vs. Johri Mal it was held as under:

It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural

impropriety. How far the court of judicial review can reappraise the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law. therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.

44. As can be noted us from the record of inquiry proceedings, the Inquiry Officer had put leading questions to the witnesses without there being any material before him to put the said questions. The Inquiry Officer had put the questions which by no stretch of imagination could be put to seek any clarification. The manner in which he had put the question to the witnesses indicates that he was acting more like a Presenting Officer. We can infer bias from the nature of the questions put by him to the witnesses that too without providing the petitioner any further opportunity to cross examine the witnesses after the questions were put by the Inquiry Officer.

45. To illustrate we extract the questions been put by the Inquiry Officer to PW-4 Ct.Hawa Singh and perhaps to save his own skin he had answered all the questions put to him in leading form on suggested lines:-

Q.1 Whether during patrolling on August 24, 1996 with other members of the force you entered Kaaripani Basti?

Ans. Yes. We all entered Kaaripani Basti.

Q.2. Whether after entering Kaaripani Basti you entered somebody s house?

Ans. Yes. We entered house of one person and Sub-Inspector Rajender Kumar, Ct.Madhusudan and Ct.N.C.Solanki had also entered.

Q.3. Whether after entering the house you demanded article or money or any other thing?

Ans. No, we did not ask for anything. SI Rajender Kumar asked the owner of that house as to from where he had brought the coal for burning or whether he was having card. Thereafter the owner of the said house started shouting loudly, collected the person, all the civilians thereafter started abusing and pelting stones on them.

Q.4. When you were surrounded by civilians whether you were saved by SI Rajender Kumar or other members of force?

Ans. No.

Q.5. On August 24, 1996 SI Rajender Kumar left in what dress for patrolling?

Ans. In civil dress.

Q.6. Whether you were caught and beaten by the civilians and if so what happened and how far you ran away from the place of incident in injured condition?

Ans. The civilians of Kaaripani Basti gave beatings with dandas, bricks and stones. I ran upto 400 yards from there but fell unconscious upto five minutes and thereafter Inspector Rajbir, Ct.Devender Yadav, Ct.Badri Prasad, SI Rajender Kumar and other force members brought him to the Line but no officer was with them and then I was sent to Regional Hospital Dhori in jeep for treatment.

Q.7. As member of force why you left for patrolling in civil dress after sunset?

Ans. On August 23, 1996 in the evening at the time of roll call I was informed to be a member of STF and leaving for patrolling. This was also told by A Coy. CHM HC/GD Ishwar Das on August 24, 1996 in the morning further informing not to go for B Shift on that day.

Q.8. Whether Coy.Commander was present at the time of roll call on August 24, 1996.

Ans. Yes. On August 24, 1996 at 19:00 to 19:15 hrs Coy.Commander K.Tuti was sent.

Q.9. Whether you informed Coy.Commander about going for patrolling?

Ans. Neither I was asked nor I informed as SI Rajender Kumar was with him.

Q.10. Whether you informed orally or in writing to any senior officer about the incident dated August 24, 1996.

Ans. No.

(Question No.11 is repetition of Question No.7 about leaving for patrolling in civil dress.)

Q.12. Who has to be blamed and held responsible for the incident dated August 24, 1996 in Kaaripani Basti. Ans. Sub-Inspector Rajender Kumar has to be held responsible for the incident.

46. The Articles of Charge record the following acts of misconduct by the petitioner:-

Article of Charge-I

(i) Leaving for patrolling in civil dress.

(ii) Entering the Basti.

(iii) Going to the Liquor Bhatti.

Article of Charge-II

(i) Picking up quarrel with the civilians inside Kaaripani Basti near liquor Bhatti at 20:00 hours on August 24, 1996 where Ct.Hawa Singh was assaulted by the civilians.

(ii) Tarnishing the image of CISF in the eyes of public.

47. Except the leading questions put to PW-4 Ct.Hawa Singh, there was no material before the inquiry officer to hold him guilty for going in civil dress especially when none of those jawans who had gone to lift Ct.Hawa Singh stated

him to be in civil dress at that time. Neither in the GD entry nor in reply to the questions put by the Inquiry Officer to PW-1 Inspector/Exe. K.Tuti has stated that any or all of them left for patrolling in civil dress. None of the member of the rescue team including HC Giri Raj had stated that he had seen Ct.Madhusudan and Ct.N.C.Solanki running towards the company office in civil dress or Ct.Hawa Singh when rescued was in civil dress.

48. Neither the Coy.Commander nor any other force member who had gone to rescue Ct.Hawa Singh from the spot had stated that Ct.Hawa Singh was found lying inside Kaaripani Basti near liquor Bhatti so as to draw an inference of the petitioner and his team members entering the basti.

49. In respect of Article of Charge-II, even Ct.Hawa Singh did not state that patrolling party was aggressor in picking quarrel with the civilians. Rather he stated that the quarrel started while they were crossing Nala Bridge when some civilians misbehaved. On hearing the noise the civilians from the nearby Kaaripani Basti who were agitating on two counts: (i) their quarters being taken away by CISF, and (ii) they were prevented from taking coal freely by CISF, reached there and started abusing and pelting stones.

50. It is a matter of record of inquiry proceedings that civilians outnumbered the members of the patrolling party and they were having stones, brickbats, lathis etc. in their hands and to save the lives it was decided to run towards A Coy. office.

51. The petitioner alongwith Ct.Madhusudan and Ct.N.C.Solanki had reached the Coy.office almost simultaneously after escaping from the spot. He reported the matter to Inspector/Exe. K.Tuti on finding that PW-4 Ct.Hawa Singh was not with them, Ct.Hawa Singh had been rescued when the petitioner alongwith Coy.Commander and additional force reached the spot where Ct.Hawa Singh was found lying in darkness. The civilians retracted on seeing large number of CISF members approaching them. The agitation amongst CISF jawans on their fellow colleague i.e. Ct.Hawa Singh being assaulted by the civilians and their desire to take revenge shows that the petitioner was not to be blamed in the said incident. Thus, there was no question of tarnishing the image of CISF.

52. PW-4 Ct.Hawa Singh admitted having received injuries while he was also running towards A Coy. Office alongwith other team members but fell down on being hit by stones and brickbats. Thus, he was not left behind by the petitioner in injured condition.

53. Analysis of GD entries made on the date of incident as well the report of the incident recorded in the GD and sent to the superior officer by the Coy.Commander Inspector/Exe.K.Tuti reflected that the petitioner was not guilty of any of the misconduct for which he had been charged. The only lapse which can be noticed from the record is his failure to notice that Ct.Hawa Singh had received injuries and had fallen on the road which fact he noticed only after reaching A Coy. Office.

54. The questions put to Ct.Hawa Singh by the Inquiry Officer, which are extracted above in para 45, and the manner in which they have been put, leads to the conclusion that they are not clarificatory in nature. Despite the incident being not reported to any senior officer and the contents of reply given by Ct.Hawa Singh to the question put by the Inquiry Officer did not find mention in the police report which was lodged by Ct.Hawa Singh in Regional Hospital, Dhori immediately after the occurrence. This gives rise to the presumption that the inquiry officer was bias.

55. We find it to be a case where the Inquiry Officer was acting more as a Presenting Officer/Prosecutor either he was importing personal knowledge to the facts of the case or on hearsay material.

56. In view of the above discussion, we declare the report given by the Inquiry officer on December 23, 1996 to be illegal. Consequently, the order dated February 15, 1997 removing the petitioner from service as well the order dated April 19, 1997 dismissing the appeal filed by the petitioner are set aside.

57. Almost two decades have passed from the date the petitioner was removed from service. Quashing the penalty imposed and directing the petitioner to be reinstated in service, we restrict that wages to only 25% of what the petitioner would have otherwise received if he performed duties. Sans full wages, we direct that the petitioner shall be entitled to all other benefits treating petitioner to be in

service from the period he was removed from service till he is reinstated.

58. No costs.

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