
(1998) 01 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 518/1995

Virender Singh Gill

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311

Citation : (2005) 3 JKJ 215 : (1997) KashLJ 321 : (1998) 1 SCT 280 : (1998) SriLJ 9

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.K.Bhardwaj, B.S.Salathia, Advocates appearing for the Parties

Judgement

Bhawani Singh, Judge.

1. This writ petition is for quashing Memorandum dated April 26, 1993, order dated June 22, 1993, Disciplinary Proceedings initiated pursuant to

order dated June 22, 1993, and order No. D. IX30/92. CRC dated 18041995 with all consequential benefits. Before advertng to the submissions

made by counsel for respective parties, let the material facts of the case be mentioned.

2. Petitioner was Assistant Commandant in CRPF. He states that he performed his duties sincerely, honestly and with complete dedication and

devotion and was not found guilty of any kind of commission or omission through out his career. He was assigned multifarious duties by the

respondents in Kashmir and Doda, which are affected by militancy. Through out his deployment at these two places, he always exposed his

deployment at these two places, he always exposed himself to danger and risk to life in the performance of his duties and in the interest of the

security of the country. Referring to some of his achievements, petitioner states that he was attacked by militants on number of occasions. In

district Doda, he was declared dead and brought to Jammu where he was subjected to number of surgical operations. He survived, but became

disabled by one leg and some other vital organs of the body. Number of pellets remained in his body, even the doctors could not extract, despite

all these operations. He continued to work with complete dedication and seriousness. While Posted Incharge Special Task Force (STF) in 98 Bn,

CRPF at Srinagar, allegation of misconduct was levelled against him that on August 19, 1991, while undergoing an ambush by militants, he and his

party entered the house of Mst. Nayema and searched the same. Later Mst. Nayema lodged complaint that her valuables including gold ornaments

had been taken away by the party headed by the petitioner. Preliminary inquiry was conducted by the respondents in which statements of

witnesses were recorded. Although petitioner was not involved in the theft, respondents started departmental inquiry against him. Memorandum

with Article of Charges dated April 26, 1993 was issued calling upon the petitioner to file written statement within ten days. Petitioner submitted his

reply. Thereafter, respondent⁴ proceeded the inquiry and examined the witnesses. None of the witnesses said anything against the petitioner, which

fact finds mention in the report when the Inquiring Authority recorded that no direct or indirect evidence was available to implicate the petitioner.

Therefore, the petitioner states that it is a case of conviction on no evidence.

3. Petitioner was called upon to file representation against the further action of punishment and on the inquiry report which he did although nature of

punishment was not specified to enable the petitioner to make the effective representation since the communication used the expression ""suitable

decision"". For one year, no action was taken and petitioner believed that the proceedings may have been dropped, but he was informed later of his

removal from service. Formal order of removal from service was not actually served on the petitioner till 881995 when it was ordered to be

delivered to him by this Court, petitioner challenges the action against him stating inter alia that Disciplinary Proceedings against him are arbitrary

since preliminary Inquiry did not point out anything against him. Bare look at the Article of Charges would demonstrate the vagueness as well as

hollowness of charges. Respondents were not sure whether petitioner committed the theft himself or allowed it to be committed. Although the

Preliminary Inquiry had been conducted by this time and the stolen articles had been recovered from an unused toilet at the instance of Raj

Narayan Singh. ChargeII is equally unsustainable in face of ChargeI. Allegation against the petitioner is covered under ChargeI. Incase he is

involved there, there is no justification for framing ChargeII Proceeding against the petitioner on the basis of these charges indicates that the

respondents were deadset against him although they very well knew that the petitioner had not played any part in the commission of theft. That is

why petitioner was proceeded against although Raj Narayan Singh, Constable, was singularly responsible for the same.

4. Petitioner further states that Inquiry Authority did not follow Principles of Natural Justice. Constable Raj Narayan Singh was not summoned to

appear in the case although he is the most important witness in the case. He could be examined in the case and cross examined by the petitioner,

since he is the person, who was in the party, committed the theft, articles were recovered at his instance and admitted the commission of theft. He

did not involve any other member of the party including the petitioner. This has caused serious prejudice to the petitioner and the Inquiry is liable to

be set aside. Further, the whole case hinges on Constable Raj Narayan Singh. When he has not said anything against the petitioner, it is a case of

no evidence. In such a situation, there could be no justification for drawing inferences against the petitioner. At one stage, the Inquiry Officer says:

Due to the nature of offence, there is very limited inconclusive direct evidence

The findings of the Inquiry Officer are based on presumptions. Confession of Constable Raj Narayan Singh, which does not mention name of

petitioner, has been used against him.

Punishment awarded to the petitioner is harsh, unreasonable and disproportionate to the charge. Therefore, it is vitiated.

5. Respondents have stated interalia that inquiry was conducted properly and in accordance with rules. Petitioner was given full opportunity to file

the reply which was duly considered. Petitioner was given opportunity to cross examine the witnesses and lead evidence in defence. While posted

Incharge, Special Task Force, 98Bn. CRPF, Srinagar, CAT operation was conducted

in August 1991, which resulted in commission of a serious misconduct on 19/8/1991.

6. On being ambushed by militants on Link Road and Raj Bagh areas, Srinagar, petitioner and his raiding party broke open and raided the house

of Smt. Nayeema with the intention to search it. While conducting this search, removed/allowed to be removed gold ornaments, cash and other

valuables from the house of the lady which were latter on recovered from an unused cistern of toiled in the Barrack of Ram bagh area on a

confession made by Constable No. 850843133 Raj Narayan Singh, a member of the raiding party. As such, petitioner failed to exercise command

and control over his party which led to the stealing of valuable items. In this view of the matter, the petitioner failed to maintain utmost integrity and

devotion to duty and acted in a manner unbecoming of a Government servant. Consequently, departmental inquiry under Rule 14 of CCS (CCA)

Conduct Rules, 1965 was started against him. The first charge against the petitioner is that he removed/allowed to be removed golden ornaments,

cash and other valuable items from the house of Smt. Nayeema. This charge stands proved since it is established that these articles removed from

the house of the lady were subsequently recovered and restored to her. Admission of Constable Raj Narayan Singh demonstrates that theft was

committed during the search of the house of Smt. Nayeema by the petitioner and his men on 19/8/1991 with his full knowledge and involvement.

Second charge is that he failed to exercise proper command and control over his party, with the result that these articles were stolen from the

house of Smt. Nayeema. The second charge is a natural corollary of the first charge. The inescapable conclusion is that there was marked failures

in the proper exercise of command and control over the functioning of subordinates by the petitioner. This has been admitted indirectly by the

petitioner in his defence. Since the charges levelled against the petitioner were proved, as such, he was removed from service vide Presidential

Order No. D.IV30/92. CRC dated 18/4/1995. Court of Inquiry revealed a prima facie case against the petitioner and the Disciplinary Authority

initiated major penalty proceedings against him.

7. The raid was conducted under the supervision of petitioner. Therefore, on the basis of circumstantial evidence adduced during the course of

inquiry, the Inquiry Officer held that both the charges against the petitioner were proved. As per the existing procedure, nature of penalty is not required to be communicated to the petitioner. Delay in taking decision in the matter was for administrative reasons. Ultimately, the order could not be served on petitioner since he avoided it and later was given to him through his counsel. During the Inquiry Petitioner did not name any person in support of his case, therefore, no one could be summoned at his instance. It is admitted that the Inquiry Officer while drawing findings has mentioned that there was no direct evidence, but the fact that the theft had actually taken place in the house of Smt. Nayeema during the search operation, carried out by the petitioner and two Constables of STF group cannot be overlooked. Moreover, these articles were recovered later on. As such, the Inquiry Officer on the basis of circumstantial evidence held that both the charges against the petitioner were proved. The raiding party removed gold, ornaments, cash and other valuables from the house of Smt. Nayeema with full knowledge, consent and connivance of the petitioner. The charge that the petitioner failed to supervise the raid/ search giving Constable Raj Narayan Singh free hand to indulge in illegal and unlawful activities stands proved substantially against the petitioner. Constable Raj Narayan Singh was summoned by the Inquiry Officer to record his statement, but he failed to report. He was not prosecution witness. It has been denied that petitioner has been connected on the basis of extracted statement of Constable Raj Narayan Singh because the charges levelled against the petitioner have been proved on the basis of evidence adduced during the course of inquiry.

8. Mr. M.K.Bhardwaj contended that this Court can interfere when findings recorded in the Disciplinary proceedings are either based on no evidence or perverse or inherently defective. For this purpose, evidence has to be appreciated. Reliance was placed on Union of India and

Another Vs. B.C. Chaturvedi: (1995) 6 Supreme Court Cases 749 and Kaushalya Devi and Others Vs. Bachittar Singh and others (AIR 1960

Supreme court 1168). In para 12 of Chaturvedi's case the Apex Court said that:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the

conclusion which the authority reaches is necessarily correct in the eye of the court. When the inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion received support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Then in para 13, it has been said that:

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant.

Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India Vs. H.C. Goel*

this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, perverse or suffers from

patent error on the face of the record or based on no evidence at all a writ of certiorari could be issued.

In *Kaushalya Devi's* case, the Apex Court said in para 8 that:

The question therefore further narrows down to this, namely, whether the finding

of the Deputy Custodian General that there was in fact an order of cancellation dated May 6, 1952, i.e. before the change in the Rules on July 22, 1952, is based on no evidence. We have already set out the facts as they appear from the record and we must say with respect, that it cannot be said that there was no evidence on which the Deputy Custodian General could come to the conclusion that the allotment of the respondents in village Budhewal had in fact been cancelled on May 6, 1952. The Deputy Custodian General has referred to that evidence as it appeared from the record in the Deputy Commissioner's office, and we again say, with respect that evidence cannot be considered irrelevant. It is true that the actual order of the Deputy Commissioner dated May 6, 1952, cancelling the allotment is not available on the record but we can not forget that the order of September 18, 1952, does not cancel the allotment of the respondents in village Budhewal in terms, as for example is the case with the order of June 17, 1952, cancelling the allotment of Nil Manth appellant, we are of opinion that the Deputy Custodian General was entitled to take in to account all the reports, proposals and orders appearing on the record and if on a review of these he came to the conclusion that an order of cancellation must have been passed on May 6, 1952, though it did not appear on the record, it can not be said that this conclusion of fact was based on no evidence or on no relevant evidence. This court had occasion again to consider the question of the extent of the High court's powers to interfere on a writ of certiorari in *Nagendera Nath Bora v. The commissioner of Hills Division and Appeals, Assam*, (1958) SCR 1240: (AIR 1958 SC 398). It was pointed out in that case that the principle underlying the jurisdiction to issue a writ or order of certiorari was no more in doubt; but the real difficulty arose as it often did, in applying the principle to the particular facts of a given case. It was also pointed out that the High Court had exercised its supervisory jurisdiction in that case in respect of errors of law apparent on the face of the record; if at all they were errors, they were errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, it was further observed, these were errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected. In the present case also we feel, with respect,

that what the High Court has done is to correct what may be errors in appreciation of documentary evidence or errors in drawing inferences. We are, therefore, of opinion that there was no error of law apparent on the face of the record in this case which would justify interference by the High Court with the order of the Deputy Custodian General, who undoubtedly had jurisdiction to deal with the matter and did not in any way exceed that jurisdiction or fail to deal with the matter in accordance with the essential requirements of law which he was authorized and required to administer. We, therefore, allow the appeal, set aside the orders of the High Court and restore that of the Deputy Commissioner Custodian General. As all this trouble has arisen because the order of the Deputy Commissioner dated May 6, 1952, was not to be found on the record and was, therefore, overlooked when the order of July 15, 1952, was passed by the Deputy Commissioner, we order the parties to bear their own costs throughout.

9. Other case from which assistance in support of the submission was drawn is of Bhagat Ram V. State of H.P. (AIR 1983 Supreme Court 454)

holding that High Court did not function as court of Appeal. But when the finding was utterly perverse, the court could always interfere with the

same since the finding of guilt is perverse and unsupported by evidence. The second facet of the above contention relates to the proportionality of

the sentence awarded to the delinquent. Mr. M.K Bhardwaj contended that in case this court does not disturb the findings of the Inquiry Officer,

the punishment of removal from service is grossly harsh and disproportionate to the gravity of offence committed by the petitioner. In support of

this contention, Mr. Bhardwaj relies on Apex Court decision in S.K. Giri Versus Home Secretary, Ministry of Home Affairs and others (1995

Supp.(3) Supreme Court 519).

10. On the relevant day, petitioner party was ambushed by the militants. With a view to track down the militants, search of the house was

conducted in a difficult locality during period when militancy was at its peak. It was utmost difficult for the petitioner to keep vigilance over his staff

in face of militants firing and attacking them from any side of the locality. He could not expect that any subordinate of his team would indulge in

stealing valuables from the house. The situation was so grave at the moment

that the petitioner had to be extracareful about militants attacks, therefore, this kind of happening was beyond his comprehension and he was not expected to be after each member of his team in a big house.

Therefore, there was no lack of bona fides on his part and in case facts are correctly appreciated, penalty of removal is unduly harsh, but also

disproportionate to the delinquency. To buttress these submissions, reference was made to para 22 and 25 Chaturvedi's case (supra). In para 22,

the court said that:

22.The aforesaid has, therefore to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the

punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this court, to which reference is not

deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature

can be invoked by a High Court only when the punishment/ penalty awarded shocks the judicial conscience.

Concurring with the views of other two judges, Hansaria, J. held in para 25 that:

25.....1 would, therefore, think that but for the selfimposed limitation while exercising power under Article 226 of the constitution, there is no

inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while siezed with this

question as a writ court interference is permissible only when the punishment/ penalty is shockingly disproportionate.

12. In Rangaswami versus State of T.N. (AIR 1989 Supreme Court 1137), the threeJudge Bench of Apex Court considered the power to

interfere with the order of punishment and held that while exercising the jurisdiction under Article 136 of the Constitution, Apex Court is

empowered to alter or interfere with the penalty for doing complete justice. What Apex Court can do under Article 142, High Court can do the

same under Article 226 of the Constitution with self imposed limitations in the exercise of this jurisdiction, learned counsel for the petitioner

contended.

13. Mr. M.K.Bhardwaj also contended that principles of Natural Justice have been violated and the Inquiry has not been conducted fairly and in

accordance with Rules. Elaborating this submission, it was pointed out that the

presenting officer requested for the summoning of three persons.

Among them was Constable Raj Narayan Singh. He was not called, although recording of his statement and subjecting him to cross-examination by

the petitioner was most essential for the determination of allegations against the petitioner. In fact, whole case depends on the conduct of Constable

Raj Narayan Singh. Evidence of Constable Raj Narayan Singh is the basis of whole case, therefore, non-examination of this witness renders the

initiation of disciplinary proceedings patently without any evidence. The defect is so glaring, substantial and fundamental that no finding can be given

by the Inquiry Office' on the available material, since there is no evidence pointing out the involvement of petitioner as alleged. This defect amounts

to clear error apparent on the case and the finding of guilt, perverse and based on no evidence.

14. Above submissions were forcefully opposed by Mr. B.S. Salathia, Sr. Standing Counsel for Central Govt. It was contended that findings are

neither perverse nor without evidence. Further, this court cannot appreciate the findings as an Appellate Court and interfere with it unless there is

error apparent on the face of it. Sufficiency of adequacy of evidence cannot be gone into by this Court and the findings can be supported even if

there is some evidence to sustain them. Reference was made to *State of Orissa and others V. Bidyabhushan Mohapatra* (AIR 1963 Supreme

Court 779); *M/s. Khushiram Behari Lal and Co. V. The Assessing Authority Sangrur and Anr.* (AIR 1976 Supreme Court 2372); *Beant Singh V.*

Union of India and others (AIR 1977 Supreme Court 388); *Zora Singh V. J.M.Tandon and others* (AIR 1971 Supreme Court 1537) and *Parry's*

(Calcutta) Employee's Union V. M/s. Parry and co. Ltd. and others (AIR 1966 Calcutta 31).

15. In *M/s Khushiram Behari Lal and co. V. The Assessing Authority, Sangrur and another* (AIR 1976 Supreme Court 2372), it is held in para 5

that:

In our opinion, the facts and circumstances referred to by the High Court throw a considerable doubt upon the correctness of the statement made

on behalf of the appellant-firm that it had stood dissolved on August 8, 1961. It has to be borne in mind that the High Court was dealing with the

matter on the writ side. In a writ petition, the scope for interference with a

finding of the departmental authorities is much more restricted and the court can normally interfere only if the finding is based upon no evidence or is based upon extraneous or irrelevant evidence or is otherwise perverse. The same cannot be said of the finding of the sales tax authority embodied in its report sent to the High Court in the present case. We see no sufficient ground to interfere with the judgement of the High Court.....

16. In *Beant Singh Versus Union of India and Others* (AIR 1977 Supreme Court 388), the court said in para 2 that:

2.....It is true that the High Court does not sit as a Court of appeal to substitute its own judgement for that of the authorities which are

empowered to give their decisions in such cases. Apart from jurisdictional errors, the High Court may correct errors apparent on the face of the

record. An error to be apparent must, according to a rough test laid down by this Court in *S.L.Hegde Versus M.B.Tirumale*, (1960) 1 SCR 890

(AIR 1960 SC 137) be one which does not take prolonged arguments to bring it to the surface. These propositions are quite well established.

17. In *Parry's (Calcutta) Employee's Union Versus M/s Parry and Co. Ltd. and others* (AIR 1966 Calcutta 31), the Court said in paras 44 and 46

that:

44. In the case of *Hari Vishnu Kamath Versus Syed Ahrned Ishaque*, (1955) 1 SCR 1104: (S) AIR 1955 SC 233) the Supreme Court upon a

review of the relevant Indian and English decisions has laid down that a Writ of Certiorari can be issued for correcting errors of jurisdiction, as

when an inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it. It will also be issued when the Court or Tribunal

acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard, or violates the

principles of natural justice. It has been further laid down in this case that the Court issuing a Writ of Certiorari acts in exercise of Supervisory and

not appellate jurisdiction and one consequence of this is that the Court will not review findings of fact reached by the inferior court or Tribunal,

even if they be erroneous unless the error is a manifest error apparent on the face of the proceedings, as for example, when it is based on clear

ignorance or disregard of the provisions of law. In other words, it is a patent

error which can be corrected by Certiorari but not a mere wrong decision.

46. Similarly, in the case of Kaushalya Devi V. Bachirtar Singh, AIR 1960 SC 1168 it has been laid down that a finding based on no evidence is

an error of law apparent on the face of the record but errors in appreciation of documentary evidence or errors in drawing inferences cannot be

said to be errors of law and cannot be corrected by a court exercising jurisdiction under Art. 226 of the Constitution.

Finally, in para 58, it is said that:

58. It has been argued before us that the findings of the Tribunal are perverse and are the result of bias. But merely because the Tribunal has

drawn certain adverse inferences or conclusion from the evidence on record, it does not necessarily lead to the conclusion that the Tribunal was

partial or biased or that the findings are perverse. The Tribunal has given reasons in great detail and it may be that in certain matters the line of

reasoning is not very cogent or logical or the Tribunal may have made observations and offered criticism which the Tribunal might not properly

have made. But that is far from saying that the findings are arbitrary or perverse or are actuated by bias. A perverse finding is not only against the

weight of evidence but is altogether against the evidence itself. A wrong finding is not necessarily a perverse merely because it is possible to take a

different view on the evidence. The Tribunal has found upon consideration of the evidence in this case that the retrenchment was not bonafide and

it was actuated by parochial considerations and the Tribunal has given reasons for coming to the conclusion. It may be that this finding is a wrong

one but it cannot be said that it is a finding which is based on no evidence or is a perverse finding.

18. On the question of proportionality of sentence reliance was placed on Municipal Committee, Bahadurgarh Versus Krishnan Behari and others

(AIR 1996 Supreme Court 1249} and State of UP. and others Versus Ashok Kumar Singh and another (AIR 1996 Supreme Court 736).

19. Dealing with the grievance as to violation of principles of Natural Justice, it was contended that inquiry was conducted and he was given full

opportunity to defend himself. No witness was examined in defence since the petitioner did not ask for any.

20. Having referred to the submission advanced by the learned counsel for both sides, it is necessary to appreciate them within the parameters of law laid down by the Apex Court from time to time in catena of decisions some of which are referred to above. Giving anxious consideration to the matter, it may be safely held that it is a case of no evidence. Thus concluded, findings recorded by the Inquiry Officer are patently perverse and unsupported by evidence. Error being apparent on the record, the grievance of petitioner has substance and his claim for quashing all the proceedings is liable to be accepted. For appreciating the matter, the articles of charge framed against him may be quoted in extenso:

ARTICLE OF CHARGE 1

Shri Virender Singh Gill, Asstt. Comdt, posted and functioning as incharge Special Task Force (STF) in 98 Bn. CRPF at Srinagar while conducting CAT operations during the period August, 1991 committed a serious misconduct in that on 1981991 on being ambushed by J and K Militants on the Link Road in Raj Bagh area Srinagar, he alongwith his raiding party broke open and raided the house of Smt. Nayeema with the intention of search and while conducting search removed/allowed to be removed Gold ornaments, cash and other valuables from the house of the said lady which was later on recovered from an unused cistern of toilet in the barrack of the Ram Bagh area on a confession made by No. 850743133 Raj Narain Singh member of the raiding party, 24 Bn. CRPF Thus the said officer Shri Virender Singh failed to maintain utmost integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in rule 3(1) (i) (ii)(iii) of the CCS (conduct) Rules of 1964.

ARTICLE OF CHARGE II

That the said Virender Singh Gill while posted and functioning as Incharge Special Task Force in 98 Bn. CRPF at Srinagar while conducting CAT operations during the period August 1991 committed a serious misconduct in that on 1981991, on being ambushed by J and K Militants on the Link Road in Raj Bagh Area Srinagar, he alongwith his raiding party broke open and raided the house of Smt. Nayeema with the intention of search and while conducting search he failed to exercise proper command and control over his party which led to stealing of valuable items

(Gold,Cash etc.) from the house of Smt. Nayeema. Thus the said Shri Virender Singh Gill failed to maintain utmost devotion to duty and thereby

violated provisions contained in rule 3(1) (ii) (iii) of CCS (Conduct) Rules of 1964 Rule 1964,

In reply to Charge I, petitioner said that: ""This is a fact that while I was posted in 98 Bn. CRPF, I was incharge of STF in 98 Bn., CRPF at

Srinagar. On 19891 while I was moving with my troops in two Gypsies in Raj Bagh area, my vehicles were ambushed by Jammu and Kashmir

Militants throwing two Grenades followed by heavy firing. We miraculously escaped and in the process chased the militants whom we saw entering

a house which I later on came to know of Smt. Nayeema. My party immediately surrounded the house and searched but no militants were found

there. But as regards removal/allowed to be removal of gold ornaments, cash and other valuables from the said lady's house. I have no knowledge

about it. Moreover none of the party members told to me. I strongly refute the charge that I removed/allowed to be removed gold ornaments, cash

and other valuables from the house by any one of my party. When next day I came to know through higher authorities about the removal of some

items during search from the house of Smt. Nayeema, I pulled up whole STF Group for two days. Ultimately No.850843133 Const. Rajnarayana

Singh confessed and the matter was informed to the higher authorities and the same was recovered. It was only my sustained and tactful pursuance

which could led the confession by No. 850843133 Const. Rajnarayana Singh. Thus as a Govt. servant I did not violate any of the provision

contained in the Rule 3(1)(i)(ii)(iii) of CCS conduct Rules of 1964.

With respect to Charge II, he said that:

This is a fact that I was commanding STF group while posted in 98 Bn., FRPF. On 19891 while moving the Rajbagh area my vehicles were

ambushed by Jammu and Kashmir militants. We miraculously escaped the ambush and chased the militants who were entering a house. We

immediately cordoned the house and the search was done, but no militants were found there.

Since the firing was still continue it was hectic raid and search of the house. Since it was a big house, I could not be present in all the rooms and

could not see No.850843133 Const. Rajnarayana Singh stealing the valuable

items. The situation was very grave at that time in the valley. Though

I captured many important militants including Dy. Chief of JKLF and Military Adviser of ALJEHAD militants group. It should not be taken as a

failure of command on my part. I strongly refute this charge also

21. Let reference to the Inquiry Proceedings he made to ascertain what material has been collected by the inquiry Officer while conducting these proceedings.

22. Evidence of prosecution witnesses Daljit Singh Commandant, 67 Bn., CRPF, R. Ghai I/C of 40 Bn. and SI Rathi Ram, 24 Bn., CRPF was

recorded. Evidence of the said witnesses mentioned in Annexure IV of Articles of charge could not be recorded during hearing from 16/11/1993 to

19/11/1993 since their whereabouts were not known. Mr. Mahesh Kumar, Dy. Commandant, presenting officer, requested vide letter

No. o.f. 11/9394/VSG dated 24/11/1993 for presenting three more fresh witnesses, namely, Ct. Balraj Singh 14 Bn, Ct. Raj Narayan Singh 24 Bn.

and L/NK(Dvr) Tarsem Chand 49 Bn. In justification for producing these witnesses, it has been stated that recording of their evidence was

absolutely necessary to bring out the facts about the incident and the request was being made under Rules 14 and 15 of the CCS (CCA) Rules,

1965. The Inquiry Officer examined request and while doing so recorded that:

I have examined his request and find that the inquiry is primarily related about the happenings inside the house of Smt. Nayeema, during the search

carried out by CRPF/STF groups commanded by Shri V.S. Gill, Asstt. Commandant or immediately thereafter. PWs listed in Annexure IV do not

throw any light in the happenings inside the house as Shri Daljit Singh, Commandant 67 Bn. and Shri R. Ghai, 21/C of 40 Bn. had made an enquiry

into the incident and were not actually present during the incident and are unable to give any direct evidence regarding issues in the enquiry.

Similarly, SI Rati Ram, PW2 was held back at the far end of the lane and had no information with regard to actual happening inside the house of

Smt. Nayeema during the incident. Smt. Nayeema and SHO Rajbagh were not present and thus their evidence also has no relevance to actual

happenings. Shri Tariq Ahmed Bhat and Khalid Ahmed Baba, civilian informers though present during the incident were held back near the Gypsy

and had not actually entered into the house and had not seen the happenings

there. Their availability also to depose before the inquiry is in doubt as their present whereabouts are not known. It is, therefore, important that Constable Balraj Singh and Constable Raj Narayan Singh, who had actually entered into the house during the search, should be examined and their statement recorded. Similarly, evidence of L/NK (Driver) Tarseem Chand is also important because he was near the Gypsy in which Shri VS. Gill and his party had travelled and under his seat, Constable Raj Narayan Singh had alleged to have kept a packet, which resulted into the identification and subsequent recovery of the stolen items. Nonexamination of these new evidences, to my judgment, is likely to impair the findings of the inquiry. In the interest of Natural Justice, I decide to summon these new witnesses to depose in the inquiry. Since the recording of these evidences were not with the evidences to fill up the gaps of the evidences on record, and as while recording the PWs as listed in Annexure IV of Memorandum of charges, I have come across the inherent lacuna in that the listed evidences have failed to throw any light on the actual happenings during search or immediately thereafter, which are the main factors to examine the charges against Shri VS. Gill.....

23. From above paragraph, it is plainly clear that evidence of Daljit Singh, Commandant, 67 Bn. R. Ghai, 21/C, 40 Bn. and SI Rathi Ram, 24 Bn.

was not found to be of much relevance and substance. That is why, the Inquiry Officer thought it fit to examine the three witnesses requested for by

the Presenting Officer

24. Statements of Balraj Singh and L/ NK Tarseem Chand were recorded, but the statement of Ct. Raj Narayan Singh was not recorded, since he

did not appear in that inquiry like the four civilian witnesses including complainant Smt. Nayeema and Station House Officer Mohain Shah,

Rajbagh, Sringar. The statements of exmilitants later Police Informers Tariq Ahmed Bhat and Khalid Ahmed Baba were not recorded although

material to the case, since they had informed Daljit Singh and R. Ghai that Ct. Raj Narayan Singh was seen by them keeping some bundle/package

under the Driver's seat in the Gypsy in which they were travelling. This information has to form part of the inquiry in his absence, since his

production was not ensured before the Inquiry Officer. In the context of inquiry, this information patently establishes that a bundle/package

containing the stolen articles was kept by Ct. Raj Narayan Singh under the Driver's seat in the Gypsy in which they were travelling and commission of theft by Ct. Raj Narayan Singh was admitted by him and the stolen articles were recovered at his instance subsequently and that no information incriminating the petitioner was made by them.

24. From the material on record, it is beyond doubt that theft was committed by Ct. Raj Narayan Singh, the packet/bundle of the same was kept

by him under Driver's seat in the Gypsy vehicle in which they were travelling. Commission of theft was confessed by him and articles were

recovered at his instance. He did not involve any other person in the commission of theft. The question when it was committed is hardly relevant,

nor it has been proved during the inquiry. Inferences cannot be drawn in this connection as done by the Inquiry Officer, though he has recorded the

finding that due to the nature of offence, there is very limited in conclusive direct evidence. Second question is whether Charge II is unsustainable

like Charge I for lack of evidence. This question is answered in the affirmative. Petitioner and his team were performing a very delicate, responsible

and highly risky duty in militancy affected area against highly trained militants. Petitioner had conducted number of such exercises in the past

without any complaint of theft or high handedness against him. Preceding the incident, his team was ambushed by militants followed by exchange of

fire. Petitioner was chasing the militants and in that process entered the house in question, since weapon fire was coming from that side. Question is

whether, he had alerted his men before undertaking the exercise. Answer to this question can be noticed from the reply of Balraj Singh to question

asked for in cross examination.

Question 4: Before the commencement of the task was their group briefed by Sh. V.S. Gill whether some precautionary measurements are taken?

Answer: Yes, we were regularly briefed about need to maintain strict discipline and high standard of personal conduct. At times, Shri V.S. Gill, A/C

used to carry out physical test/ frisking of our body also.

25. In the context of situation in which the petitioner was put at the time of incident, it is difficult to expect that he should have followed the two

other members of his team at every step while search was being conducted in a two storey house with number of rooms. It was also not possible

that theft of Valuables would be committed by any of his teammates either when all the three were in the house or some time later when he was

searching for the injured militant. Subsequently, when the incident came to light, stolen articles were recovered at the instance of Constable Raj

Narayan Singh, who confessed it without naming any other person party to the crime. In these circumstances, it is hardly possible to say that

articles were removed/ allowed to be removed with his connivance or that petitioner failed to exercise proper control over his subordinates.

26. Apart from the fact that there is no evidence against the petitioner, there is violation of principles of Natural Justice, since Constable Raj

Narayan Singh was not made available during the inquiry to enable the petitioner to crossexamine him on all the important aspects of the

allegations. By this omission, petitioner has been seriously prejudiced, otherwise the genesis of delinquency could have been established. In the

absence of evidence against the petitioner, no finding on the two charges against him could be arrived at and drawing of inferences from

circumstances in absence of material witnesses cannot be approved.

27. As a matter of fact, there is no evidence suggesting the involvement of the petitioner under either of the two charges against him. Therefore,

entire proceedings against the petitioner are liable to be set aside. Question of proportionality of sentence need not be therefore, examined.

No other point was urged.

What emerges out of the aforesaid examination of the matter is that inquiry proceedings as well as Order No.D.IX30/ 92 CRC dated 18041995

are, therefore, set aside. The petitioner will join the service and respondents are directed to extend all consequential benefits of service to him.

28. Cost on parties.