Durga Prasad vs Govt. Of Nct Of Delhi on 23 April, 2025

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2025 INSC 548

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C) No.2111/2023)

DURGA PRASAD …APPELLANT(S)

VERSUS

GOVT. OF NCT OF DELHI & ORS. …RESPONDENT(S)

JUDGMENT

MANOJ MISRA, J.

1. Leave granted.

2. This appeal impugns the judgment and order of the High Court of Delhi at New Delhi1 dated 12.09.2022 passed in W.P. (C) No.1085/2002 by which, though the writ petition of the appellant against the order of the Central Administrative Tribunal2 in O.A. No. 232/2002 was allowed, liberty was given to the disciplinary authority to issue a fresh note of disagreement to the appellant, within a period The High Court CAT of four weeks, and pass appropriate orders after considering the response.

Background Facts

3. This case has a checkered history. The appellant at the relevant time (i.e. 1984) was posted as Inspector of Police (i.e., Station House Officer3) at Police Station Kingsway Camp, North District, Delhi. During that period, post assassination of the then Prime Minister Smt. Indira Gandhi, “Anti-Sikh Riots4” broke out. In May 1985, the appellant was promoted to the post of Assistant Commissioner of Police, inter alia, on appraisal of service record. Later, a Committee was constituted to look into the failure of the police in effectively tackling the 1984 riots. In its preliminary report, the Committee castigated certain police officers for their failure in controlling the riots. Based on that, charge memo was issued to the appellant on 20.08.1992, inter alia,

charging him for dereliction of duty/ negligence in controlling those riots in the area under his command. In the ensuing inquiry, vide SHO 1984 riots report dated 28.01.1999, the Inquiry Officer exonerated the appellant of the charges. However, the Disciplinary Authority disagreed with the report of the Inquiry Officer and ordered a de novo inquiry vide office order dated 07.10.1999.

4. Aggrieved by direction for a de novo inquiry, the appellant filed Original Application5 No.1841/2000 before Principal Bench of CAT at New Delhi. CAT allowed the said O.A. vide order dated 27.09.2000.

The operative portion of the order is extracted below:

> "6...We find that the disciplinary authority is ... not justified in ordering a de novo enquiry. If one has regard to the .....rule 15 ....., all that he could have ordered was a further enquiry and not a de novo enquiry. In the circumstances, the impugned order passed by the disciplinary authority on 06.08.1999...is quashed and set aside.
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> 7. Consequent upon the aforesaid order of the disciplinary authority of 06.08.1999, a corrigendum has been issued by the disciplinary authority on 07.10.1999..., whereby, an amended charge has been framed. Since the order of the disciplinary authority of 06.08.1999 is set aside, aforesaid consequential corrigendum of 07.10.1999 is also quashed and set aside.
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> 8. In view of the aforesaid order, we find that it would be open to the disciplinary authority, if he is so advised, to issue fresh orders disagreeing with the findings of the enquiry officer, but this he can do only after issue of a notice and after affording applicant a reasonable opportunity of being heard. Thereafter, in case he is inclined to O.A. issue a direction for a fresh enquiry, the same would not be a de novo enquiry in the matter.
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> 9. Present OA is allowed in the aforesaid terms.

No order as to costs."

5. Pursuant to the aforesaid order of CAT, on 04.01.2001 the Disciplinary Authority issued a disagreement note calling upon the appellant to submit his representation within 15 days of its receipt. The Inquiry Report was supplied later vide letter dated 18.01.2001.

6. After getting response from the appellant, the Disciplinary Authority, vide order dated 28.12.2001, imposed a penalty of reduction in rank upon the appellant thereby demoting him to the post of Inspector from the post of Assistant Commissioner of Police, till retirement (i.e., till 31.03.2004).

7. The appellant challenged the order of punishment before CAT through O.A. No.232/2002, which was dismissed vide order dated 29.01.2002.

8. Aggrieved by CAT's order dated 29.01.2002, the appellant filed writ petition (i.e., W.P. (C) No.1085/2002) before the High Court, which was allowed in the following terms:

> "14. ... This court is of the opinion that the order passed by the Central Administrative Tribunal as well as the order passed by the Disciplinary Authority are liable to be set aside. The Disciplinary Authority is, therefore, granted the liberty to issue a fresh note of disagreement to the petitioner within a period of four weeks, and the petitioner is also granted 4 weeks' time to file a response to the note of disagreement. Thereafter, the Disciplinary Authority shall be at liberty to pass appropriate orders in accordance with law.
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> 15. This court has been informed that the petitioner has attained the age of superannuation and, therefore, the competent Disciplinary Authority shall be at liberty to pass the appropriate orders of punishment, keeping in view the date of retirement and the CCS (Pension) Rules, 1972.
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> 16. The petition is disposed of with the above observations. Pending applications, if any, stand disposed of."

9. The High Court found fault with the so-called disagreement note issued by the Disciplinary Authority before passing the punishment order. In the view of the High Court the disagreement note was not a note of dissent but an expression of opinion that the charged officer is guilty. Thus, in the view of the High Court, the Disciplinary Authority had pre-judged the matter and, therefore, the show cause notice was rendered nugatory, akin to a post decisional hearing, which violated the principles of natural justice as also the extant service rules.

10. Importantly, the correctness of the order of the High Court to the extent it set aside the order of punishment has not been questioned by the Govt. (i.e. the Disciplinary Authority). It is the appellant alone who has impugned the order of the High Court to the extent it grants liberty to the Disciplinary Authority to proceed afresh from the stage where the mistake crept in.

11. We have heard learned counsel for the parties and have perused the materials on record.

Submissions of the Appellant

12. The appellant contends that charges relate to the year 1984; inquiry was initiated in 1992; inquiry report was submitted in 1999; de novo inquiry directed by the Disciplinary Authority was set aside;

punishment order was passed in 2001; the writ petition was filed in the year 2002 whereas the matter came up for final hearing in the year 2022; and, in between the appellant retired, therefore, once the order of punishment was found bad in law, the matter should have been closed with no liberty to the Disciplinary Authority. Otherwise, it would be nothing but persecution of the appellant on a charge which was found not proved by the Inquiry Officer. In anyway liberty to the Disciplinary

Authority to pass a fresh order in accordance with law would be an exercise in futility as the Disciplinary Authority has already disclosed its intent to punish the appellant. It was thus prayed on behalf of the appellant that this Court may look into the matter, satisfy itself as to whether there is any good reason to differ with the findings returned in the inquiry report and pass appropriate orders.

Submissions on behalf of Respondent

13. On behalf of respondent it was submitted that though respondents have not challenged the order of the High Court, the facts disclosed in the disagreement note would indicate that there were good and cogent reasons to differ with the findings of the Inquiry Officer as from the materials on record charges were duly proved. However, since the High Court found fault with the disagreement note, fresh steps would be taken and there is no question of bias as by now there would be a fresh set of officers.

Hence, on behalf of the respondents, it was prayed that the appeal may be dismissed.

Analysis/ Discussion

14. Having taken note of the background facts as well as the rival submissions, in our view, the only question that arises for our consideration is whether, in the facts of the case, the High Court ought to have given liberty to the Disciplinary Authority to correct its mistake. If not, then what would be the appropriate relief to the appellant.

15. In that context, we have carefully perused the materials on record. A perusal of the record would reveal that the charges are in respect of failure to control the 1984 riots in the area under the command of the appellant. At the relevant time, the appellant was in the rank of an Inspector. Later, he was promoted to the post of an Assistant Commissioner of Police, which he held when the charge-sheet was served upon him in the year 1992. Notably, the appellant was exonerated of the charges by the Inquiry Officer. Initially, disagreeing with the inquiry report, the Disciplinary Authority directed for a de novo inquiry, which CAT found unjustified. However, CAT gave liberty to the Disciplinary Authority to issue a disagreement note and proceed. Instead of issuing a disagreement note simpliciter, the Disciplinary Authority issued a notice along with a note expressing his opinion that appellant is guilty and, thereafter, proceeded to impose punishment of reduction in rank.

The High Court found fault with the procedure and held that the show cause notice was just an eye wash as the Disciplinary Authority had already made up its mind to punish the appellant. Consequently, the High Court set aside the order of punishment and gave liberty to issue a fresh note of disagreement and pass consequential order in accordance with law.

16. The aforesaid decision of the High Court has been questioned in this appeal to the extent it gave liberty to the Disciplinary Authority to proceed further. The appellant claims that in the facts of the case the writ petition should have been allowed in terms prayed for, with full consequential benefits

to the appellant.

17. In our view, what assumes importance is that the decision of the High Court came in the year 2022 when already 38 years had passed from the year in which those riots occurred. In between, the appellant retired from service and is now aged about 80 years.

We are conscious of the law that ordinarily where enquiry is found deficient, procedurally or otherwise, High Court should remand the matter back to the authority concerned for redoing the exercise from the stage where the error crept in. However, it is equally settled that where there is long time-lag or circumstances are such that a remand at that stage would be unfair, or harsh, or otherwise unnecessary, the High Court can exercise its discretion and pass suitable orders as the facts and circumstances of the case may demand6. At times, where enquiry is found faulty, necessitating a remand, the Court may, on See: Allahabad Bank & others v. Krishna Narayan Tewari, (2017) 2 SCC 308 (paragraph 8) account of long delay, instead of remanding the matter, mould the relief as was done by this Court in the case of M.V. Bijlani v. Union of India7.

18. In the instant case, admittedly, there was no procedural lapse in conducting the inquiry by the Inquiry Officer. No doubt, initially, the Disciplinary Authority ordered for a de novo inquiry but that order was set aside by CAT. Thereafter, the Disciplinary Authority issued a disagreement note and proceeded to impose punishment upon the appellant. There can be no cavil to the existence of power with the Disciplinary Authority to disagree with the opinion of the Inquiry Officer. But, in the event of disagreement, he has to give brief reasons for his disagreement and provide an opportunity to the employee to respond to such disagreement note before forming its own opinion with regard to imposition of punishment on the delinquent8. In the instant case, the note issued by the Disciplinary Authority was more an expression (2006) 5 SCC 88 Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84; and Yoginath Bagde v. State of Maharashtra & Another, (1999) 7 SCC 739 of opinion regarding the appellant being guilty than a note of dissent with the findings returned by the Inquiry Officer. The High Court, therefore, set aside the order of punishment with liberty to the Disciplinary authority to issue fresh disagreement note.

19. In ordinary circumstances, the order of the High Court giving such liberty to the Disciplinary Authority may be justified. But here is a case of huge delay as also appellant retiring in between. Moreover, the Disciplinary Authority on its own did not impose punishment of dismissal or removal from service upon the appellant which might have resulted in forfeiture of pension. No doubt, a punishment of reduction in rank, as was imposed, might also have a bearing on the quantum of pension payable to a retired employee but its consequences would be much less severe. In that light, and by taking into account the advanced age of the appellant, we propose to examine whether it is a fit case to put a quietus to the proceeding.

20. For that end, we propose to carefully examine the findings in the inquiry report as well as the dissent note issued by the Disciplinary Authority. The Inquiry Officer's report, dated 28.01.1999, exonerating the appellant of the charges is on record as a part of Annexure P-6. The same is reproduced below:

> "Inquiry Officer's Report in case of Sri Durga Prasad Assistant Commissioner of Police, Charged Officer Sri Durga Prasad, Assistant Commissioner of Police (referred to as C.O hereinafter) is being proceeded against Rule 14 of the CCS (CCA) Rules, 1965 (vide Directorate of Vigilance Memorandum No. F7(9)/92-DOV /1017 dated 20.3.1992 for his alleged lapses in handling law and order situation which prevailed in Delhi in the wake of the assassination of the Prime Minister Smt. Indira Gandhi on 31.10.1984. The C.O. gave his written reply to the Articles of Charges on 20.8.1992 and this inquiry was referred to the undersigned vide Vigilance Department order No. F7(9)/92 /DOV/4297 dated 13.8.1998. By an order of the same date, Sri Puli Chand, Sales Tax Officer was appointed the Presenting Officer in this case.

In annexure IV to the Charge Memorandum, seven witnesses were those who had filed affidavits in connection with the Nov. '84 riots before Inquiry Commission set up in this matter. None of them appeared before this inquiry in spite of summons. It was learnt that Sri Piara Singh, Sri Rajinder Pal Singh, Jaimal Singh and Sri Pritpal Singh were not reciting at the addresses available with the Police Department. Since their present whereabouts are not known they could not be contacted. Two witnesses, namely, Sri J.S. Uppal and Shri Satnam Singh did not appear in spite of repeated summons and they had to be dropped.

As a result, the Presenting Officer had to rely on the documentary evidence like the radio log book, curfew order etc., all of which have been admitted by the C.O. Now I propose to deal with each Article of Charge read with the imputations, and the evidence available against each.

Charge No.1 That Shri Durga Prasad while functioning as SHO, Kingsway Camp failed to utilize his staff effectively and to take effective / preventive measures to control the violence which started in the wake of the assassination of Smt. Indira Gandhi which resulted in heavy loss of life and property during November 1984 riots. About 15 deaths occurred during riots in his area. No preventive arrests were made either on 31.10.1984 or up to 4.11.1984 when the riots were in full swing.

Statement of Imputations in support of Article 1 of Charge "Shri Durga Prasad, while functioning as SHO, Kingsway Camp was supposed to be (sic) and exercise overall supervision over the police station under his control. The facts emerge from the police records and affidavits that during Nov. '84 riots, Shri Durga Prasad failed to rise to the occasion. No preventive measures were taken when the riots were in full swing." On behalf of the disciplinary authority, radio logbook of North District has been produced as the evidence against the C.O. who has admitted the radio logbook entries as correct (exhibit S4). The Presenting Officer has, however, not been able to prove the Daily Diary register of police station Kingsway Camp as it was not made available to him.

Similarly, he could not produce the radio logbook of P.S. Kingsway Camp or the logbook of vehicles of P.S. Kingsway Camp for the relevant period. FIR Nos. 785, 786 and 789 all of which were cited as documents to be relied on for proving the charges against the C.O. as mentioned in annexure III to the Charge Memo, have also not been made available. In short, the only items of documentary evidence produced to prove the charges are the order under section 144 CrPC (exhibit S1), curfew order (exhibit S 2), Deputy Commissioner, Delhi's report on the number of deaths (exhibit S3) and

radio logbook of North District (exhibit S4). All of these documents were readily admitted by the C.O. and he has been able to make better use of them in his defense. None of the documents mentioned above throw any significant light on any laxity or lapses on the part of the C.O. They do not mention any occasions or locations where lathi-charge, tear gas or firing was needed but was not resorted to. There is nothing in these documents to show that effective preventive measures were not taken where the police was present. The Presenting Officer has argued that in departmental proceedings, preponderance of probability, and not proof beyond reasonable doubt as applicable in criminal cases, should be seen while judging the culpability or otherwise of the delinquent officer. But here is a case where there is hardly any evidence to prove any of the charges, let alone preponderance of probability. Similarly, he argues that in departmental proceedings the question of proof of documents should not arise as most of the documents are maintained officially and should be presumed to be correct. If this argument was true, there would be no need of any departmental proceedings as the disciplinary authority which awards punishment could have summoned all these documents maintained officially then taken decision on the basis of them. The Presenting Officer has not appreciated time- honored maxim of natural justice that no evidence even in departmental proceedings can be made use of unless it has passed through the test of cross-examination by the C.O. The very object of cross-examination is to question the accuracy, credibility of the evidence adduced and highlight the discrepancies therein. Where this procedure has not been followed the evidentiary value of witnesses or documents becomes zero. A number of judicial pronouncements have emphasized that cross examination is a very valuable right, and prevention of its effective exercise would be shared the proceedings. The Presenting Officer has also argued that the documentary evidence is to be considered more important than the oral evidence as the document does not lie or forget. Without questioning the validity of this argument, it may be observed that he has not been able to produce any document which is relevant to prove the charges regarding the lack of effective preventive measures, gross negligence or dereliction of duties with mala fide intention - the charges which have been cited in Annexure II as the constituents of misconduct in this case. The Presenting Officer has further argued that the burden of proof in certain cases lies on the C.O as it is done in case of misappropriation etc. In such cases, according to him, the onus of disproving essential facts lies on the C.O. This principle is not applicable in the present case for the reason that a number of violent incidents or deaths occurring in the jurisdiction of a police officer do not, ipso facto, prove his incompetence, negligence or dereliction of duty unless it is established that he was given adequate men and resources to tackle the law and order situation and yet he willfully decided not to use them with some ulterior motive. In the present case, there is an abundance of evidence to show that the C.O. exercised all due care and caution at his command and made all possible efforts to control the law and order situation in his jurisdiction. The Presenting Officer's case is that according to the radio logbook entry dated 31.10.84 at 12.24 hours and 17.20 hours, C.O. was instructed to mobilize maximum force in the area of P.S. Kingsway Camp ensuring that no untoward incident took place. He argues that in spite of these instructions, C.O. failed to do this and his failure resulted into incidents of looting, arson and murder of many persons. In order to prove this allegation, the P.O. had to show that additional force was made available to the C.O. in time and also that the C.O. had been informed in time to take preventive action. None of these points has been proved by any evidence. On the other hand, the C.O. has stated in his defense statement (placed on record on 30.10.98) that on 1.11.1984, he tried his level best with the help of force available with him, to control the situation and that special care was taken to protect the residences of Sardar

Richpal Singh, Nirankari Baba and Ashwani Minna, proprietor of the newspaper 'Punjab Kesri' - all prominent persons residing in the area of Kingsway Camp. Similarly, important installations like telephone exchange and the radio station were also protected by his force. In this connection, he has also given the sequence of events (annexure II of his defense statement) to show that he and his force made all possible efforts to combat the deteriorating situation during the riots. In the said annexure he has mentioned that on 1.11.84 he had no extra force except the meagre staff available at the police station. At 8:30 AM he also requested for the fire brigade. The fire brigade was not made available to him. His force, however, succeeded in stopping and disbursing a mob coming from Shakti Nagar side. A small additional force was made available to him consisting of 18 persons of the CRPF at 10:25 a.m. on 1.11.84 who were deployed at gurudwara Nanak Piau and the radio station. As a result, these places were saved from any kind of mischief or loss.

At about 11:00 AM, the C.O. received a message that more than a thousand persons (Sikhs) had gathered in Model Town making the situation tense. He reached the spot and pacified the crowd. Similarly, he tackled the law and order situation at GT Karnal Rd. by dispersing the mob assembled there and also at gurudwara Parmanand colony and gurudwara Gujranwala Town. He has also mentioned about a number of bogus calls received by him, which distracted the attention of force from the real troubled spots. In this way, the C.O. has mentioned number of incidents that took place at gurudwara Mukherjee Nagar, along the GT Karnal Rd., gurudwara Dhirpur, gurdwara 'D' Block and a few residential units at Gujranwala Town, Model Town III, C.C. Colony, Rana Pratap Bagh, Nirankari Colony etc., which he and his force tackled during the day. The Presenting Officer has not been able to refute this portion of the defense statement by any evidence or cogent argument.

In annexure III (295/C) to this defense statement, the C.O. mentioned that the strength of his police station Kingsway Camp during the riots consisted of one Inspector, 9 Sub- Inspectors, 7 Assistant Sub-Inspectors, 18 Head Constables and 75 Constables - a force which was too inadequate to tackle hundreds of incidents that occurred within a short span of 2- 3 days. The C.O. does admit 8 deaths that occurred in his jurisdiction out of which six were the Sikhs and two non-Sikhs.

The C.O. has also produced 6 defense witnesses to prove his case. Sri DL Kashyap (DW1) was the Assistant Commissioner of Police, Kingsway Camp and the C.O.s immediate superior. He has deposed that in the morning of 1.11.84, SHO Durga Prasad (the C.O.) accompanied him to Rana Pratap Bagh and they managed to disperse the unruly mob by resorting to a vigorous lathi charge. According to him, the C.O. did a good work in the area of Model Town, where he also rescued a Sikh family from the clutches of the rioters and protected a number of prominent Sikh leaders. He also ensured the safety and security of gurudwara Model Town, another sensitive and vulnerable place. In brief, he emphasized that the C.O. remained alert, vigilant and active throughout the period of riots continued and that in his opinion 'he spared no efforts to combat the situation that arose in his jurisdiction'. It may be mentioned that Shri Kashyap (now Deputy Commissioner of Police) was not accused, in any manner, in these riots and got commendations from many quarters for his good work. His testimony in favor of the C.O. should therefore be totally relied on. Shri Shiam Singh, ACP, Crime Branch (DW 2) has deposed that he investigated as a member of the special investigating agency headed by the DCP (Vigilance) the complaint of atrocities committed during

the riots including complaint of Sardar Piara Singh of GT Karnal Road and found that the allegations of Sardar Piara Singh against the C.O. could not be substantiated. Shri K.L. Kiara, retired Inspector of Police (DW3) stated that on 7th of November 1984, Sardar Piara Singh had made a complaint about his workplace cum residence having been looted. In this connection, four persons were arrested on the identification made by Sardar Piara Singh and the case was put to Court. He has also stated that Sadar Piara Singh's family was dispatched in a car to a place of safety. His complaint against the C.O. was thus totally unfounded. Inspector Satya Prakash (DW4) has deposed to the effect that Sardar Piara Singh had some animus against him as he had arrested Sardar Piara Singh under Delhi Police Act, a few months back.

Constable Anil Kumar (DW 5) of police station Model Town proved with the help of the original daily diary PS Model Town that on 1.11.84 twenty-six persons were arrested under the preventive sections 107/151 CrPC in connection with these riots. He also proved the arrest of eight persons in the jurisdiction of PS Kingsway Camp on 2.11.84.

Head Constable Hukum Singh of PS Model Town has proved with the help of original Malkana Register (exhibit DW6 /A) that a substantial quantity of property looted by the rioters was recovered by the C.O. and his staff, and restored to their owners.

In view of facts and circumstances mentioned above the Article 1 of Charge regarding the lack of effective control and non-utilization of staff and lack of preventive measures, etc. remains unproved.

Charge No.2 "That Shri Durga Prasad did not take any action to control the mob either by the use of tear gas, lathi charge or firing." Statement of imputations in support of charge 2 "It is evident from the record that mob violence started in the area of PS Kingsway camp on 1.11.84 and continued up to 4.11.84. Cases of arson and looting were reported at Rana Pratap Bagh, Mukherjee Nagar, Model Town, Wazirabad on 1.11.84. At taxi stand Rana Pratap Bagh, taxis and buses were set on fire by the mob. Incidents of arson and looting occurred at Model Town and Outer Ring Rd. Gurudwara at Mukherjee Nagar was set on fire by the mob. Violence was reported at Mukaraba Chowk and Wazirabad. During riots mobs burnt several cars and two wheelers and about 15 persons were killed. No arrests were made under the cases registered during the riot. No effective firing was resorted to by the SHO." The incidents mentioned in the statement of imputations may have taken place, but none of them has been proved by any evidence produced on behalf of the disciplinary authority with the help of any independent eyewitness. Some of these incidents do find mention in the radio logbook in respect of PS Kingsway Camp. The C.O. has mentioned in his defense that as many as 106 persons were arrested by him and his staff during these riots. The details have been given in the handwritten copies of the extracts from the relevant daily diaries (annexure III of his defense statement, 286/C to 292/C) regarding the 8 persons who had died in his area. Four persons, according to the C.O., had come from Punjab who got caught into the clutches of the riots. According to him, 53 rounds were fired at different places at different times and dates during this period. He further says that no tear gas was available at his disposal. This statement has not been refuted by any evidence or argument by the Presenting Officer. The C.O. also takes the credit of recovering property worth Rs. 4.1 lakhs under his supervision. The details given in his defence statement (annexure IV 221/C to 271/C). No prosecution evidence has come forth to refute these

facts. It has already been mentioned while discussing Article 1 of Charge that whenever needed the C.O. and his force resorted to lathi charge. In short, this Article has not been supported with any type of evidence either oral or documentary. The Presenting Officer argues that D.D. entries No.6A, 9A and 73B dated 1.11.84 show that no action was taken by the C.O. He has, however, not mentioned as to what these entries were about. Nor has he been able to summon any witness to prove the veracity of the contents of those entries after a proper cross- examination of the witnesses by the C.O. In spite of this, the C.O. has replied to this point in his written arguments. He says that action taken by Sub- Inspector Karan Singh is mentioned in D.D. entry No.49 dated 1.11.84 and in case of incident, some local police officer was also present on the spot to control the situation before arrival of S.I. Karan Singh. Likewise, he has given details of actions taken in respect of all the D.D. entries mentioned by the Presenting Officer.

In fact, Article 2 of the Charge is hardly any different in substance from Article 1 of Charge which has been discussed above in detail. What is, however, really important to notice is that the allegation of inaction on the part of the C.O. seems to be totally baseless, and that his non- use of tear gas was occasioned by its non- availability to him. In view of the facts and circumstances discussed above, Article 2 of charge remains unproved.

Charge No.3 “That Shri Durga Prasad, SHO had not made any efforts to implement order under section 144 CrPC which was promulgated on 31.10.84 and to enforce the curfew which was imposed subsequently.” Statement of imputations in support of Article 3 of Charge “He made no efforts to implement the order under section 144 CrPC which was promulgated on 31/10/84 and the curfew which was imposed subsequently. He did not use lathi charge, tear gas or resorted to effective firing to control the mob as no one was injured or killed by the police firing.” This Article of Charge is again a substantial repetition of the earlier two charges. It has been made abundantly clear while discussing the earlier Articles of charge, that there is no evidence on record to show any inaction, lack of effective control, inaction on preventive measures, etc. on the part of the C.O. On the contrary, there is adequate evidence and explanations in the C.O's defense statement to prove that he and his staff spared no efforts in controlling the riots, although with varying degrees of success. In view of this, the charge that he did not make any efforts to implement the prohibitory order under section 144 CrPC appears to be rather far-fetched. Every action taken with a view to dispersing the mob was an effort to implement section 144 CrPC. The C.O. has stated in his written arguments that the mobs were dispersed but no arrest under section 188 of the IPC for the reason that he did not have enough manpower for effecting arrests of such overwhelming number as were encountered on the troubled spots.

In view of this, Article 3 of the charge remains unproved.

Charge No.4 “That Shri Durga Prasad, SHO did not make any efforts to utilize even the additional force which was made available to him on 1st, 2nd and 3rd November 1984.” Statement of imputations in support of Charge No.4 “Additional force of 2 SIs, 13 HCs and 177 Constables was made available to him on 1.11.84, 2.11.84 and 3.11.84 but he did not utilize the additional force properly to monitor the incidents of rioting and did not make adequate efforts to control the situation in the area of PS Kingsway Camp.” Replying to this charge, the C.O. has stated that

additional force provided to his police station was inadequate. Besides, it was made available to him long after it was demanded. The meagre additional force provided to him during 1st November to 4th November was deployed to protect the important installations, gurudwaras and other vulnerable areas depending on the situation prevailing on that particular moment. Annexure 11 of his defence statement gives all the details. The crux of the C.O.'s argument is that some additional force was supplied to him but its arrival was not timely. Reinforcement arrived as and when available, and not as and when needed. The Presenting Officer has not been able to specify any particular case or incident which was allowed to happen in spite of the fact that adequate force was available to him to prevent that situation. Nor has he been able to show that additional force provided was sitting idle or was deployed at places which did not need them. In absence of evidence on such vital points, this charge remains unproved.

Summing Up During his general questioning, the C.O. has summed up the entire situation prevailing at that time in a satisfactory manner. He says that in the firings the aim was to disperse the mob rather than to injure them. That is how no injuries were reported in cases of police firings. The outside police force placed at his disposal was too small especially in view of the fact that the incidents were happening in a very haphazard manner and at locations very far from each other. With the help of a force consisting of 100 armed persons, or so, it was not possible to control the riots which happened at an unprecedented scale. There was no prior information of any of these happenings and the police were just taken by surprise at the developments. He also mentions that his superior officers never gave him an indication that his work during the riots was in any way less than what was expected of him. He was, in fact, promoted to the rank of Assistant Commissioner of Police in the year 1985 i.e., soon after these riots, obviously, on the basis of good reports on his conduct and performance given by senior officers.

Considering all these facts and circumstances, and that none of the individual charges has been proved against him, there is no case of any misconduct, or contravention of the provisions of rule 3 of CCS (Conduct) Rules, 1964, against Sri Durga Prasad, the Charged Officer.

Signed RP Rai Inquiring Authority Dated: 28.1.1999" (Emphasis supplied)

21. On the aforesaid report, the disagreement note of the disciplinary authority sent along with the notice issued to the appellant dated 04.01.2001, which is part of Annexure P-6, is reproduced below:

> "Note giving reasons for disagreement with the findings of inquiry officer in the case of Sh. Durga Prasad, A.C.P. By the Disciplinary authority i.e. Governor, Delhi.
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> 1. I have examined the Inquiry Report on the charges against Shri Durga Prasad, formerly Station House Officer, Police Station Kingsway Camp, Delhi. Although the Inquiry Officer has held that none of the charges have been proved against the Charged Officer, I am not in agreement with the findings of the Inquiry Officer. These findings are, in the first place, not based on a correct appreciation of evidence and the documents available on record. Moreover, the Inquiry Officer, in the summing up of his report, has used extraneous factors to absolve the Charged Officer of any wrong

> doing which have nothing to do with either the facts on record or the inquiry process, for instance by alluding to the promotion earned-by the Charged Officer in 1985, "soon after the riots", which has led the Inquiry Officer to presume that this was so on the basis of his good conduct and performance.

The charges framed against the officer have to be considered on their own merits and based on the relevant evidence. Neither adverse nor positive ACR entries, nor even the fact of subsequent promotion, should be used to prejudice the evaluation of charges against any official who is subject to disciplinary proceedings, except his actions in respect to the charges faced by him. If this were not true, no action could possibly be taken against an officer promoted subsequent to the period in which he has committed misdemeanour attracting a major or minor penalty.

2. The Charged Officer had inspected the original documents (copies of which had been made available to him with the charge sheet), except the radio logbook of the Control Room of North District. The logbook of vehicles of the Police Station Kingsway Camp, also not provided, was incidentally not a listed document. It is also true that none of the 7 witnesses who had filed affidavits in connection with the November, 1984 riots before the Inquiry Commission set up on the matter appeared before the Inquiry Officer, despite summons (given that the precise whereabouts of the majority of the witnesses were known). As a result, the Presenting Officer had to rely upon the documentary material at hand. A reading of the Inquiry Report, however, reveals that the Inquiry Officer was unable to take account of the documentary evidence presented in arriving upon his conclusions, for instance, he has stated in the Inquiry Report that the "radio logbook of P.S. Kingsway Camp" and FIR nos.785, 786 & 789, all of which were listed documents, could not be produced. This is incorrect. In his letter dated October 7, 1992 sent in response to the letter forwarding prosecution documents sent by the then Deputy Commissioner of Police (Vigilance), Delhi, dated August 28, 1992 the Charged Officer confirmed receipt of, inter alia, the radio logbook of P.S. Kingsway Camp dated 31.10.1984 - 4.11.1984 as also the relevant FIRs. Furthermore, in his written submission made on July 30, 1998, made in response to the charge memo, dated August 20, 1992, the Charged Officer admitted to having received the documents. Thereupon, in his defence statement made before the inquiry officer on October 21, 1998, Shri Durga Prasad once again acknowledged the foregoing documents, including the radio logbook of P.S. Kingsway Camp and the FIRs as "admitted by the Charged Officer as a matter of record." The principal infirmity in the findings of the Inquiry Officer stems from the fact of his having not considered the full documentary evidence and his erroneous surmise that the prosecution documents were deficient.

3. Article I of the charge concerns the failure on the part of the Charged Officer, while functioning as SHO, to utilise his staff effectively and to take effective preventive measures to control the violence which started in the wake of the assassination of Mrs. Indira Gandhi that resulted in heavy loss of life and property during the November 1984 riots. According to the radio logbook entries dated 31.10.1984 at 12.24 hrs., 17.20 hrs and 19.22 hrs., the Charged Officer was instructed to mobilize maximum force in the area of P.S. Kingsway Camp and to maintain law and order so that no untoward incidents could take place, despite these instructions, the Charged Officer failed to effectively mobilize his force in the area. Besides the regular force with the Police Station constituted by the Charged Officer, 9 Sub-Inspectors, 7 Assistant Sub- Inspectors, 18 Head Constables and 75

Constables, additional force was also made available to him from 01.11.1984 onwards. No preventive arrests were made or bad characters arrested on 31.10.1984 or 01.11.1984. This fact has been admitted by DW-5 in the cross- examination during his deposition in the inquiry proceedings. The observation of the Inquiry Officer that on 01.11.1984, 26 persons were arrested under the preventive sections 107/151 Cr.P.C. in connection with the riots is contrary to the documentary evidence available on record.

4. Considerable information of ongoing violent incidents of looting, arson and clashes was passed on to the Charged Officer as shown by the radio logbook and daily diary register, but the action taken by him was not commensurate to the requirements, which resulted in loss of innocent lives and destruction of property. While the Kusum Lata Mittal report on the conduct of Delhi Police during the November 1984 riots mentioned 15 deaths in the area within the jurisdiction of P.S. Kingsway Camp. Even a single death, if it was avertable and a result of ineffective action on the part of those responsible for law enforcement, is unacceptable and for which responsibility must be fixed.

5. The Charged Officer was expected to take stock of the serious situation and take timely preventive measures, but he failed to rise to the occasion. The case is thus not one of a routine dereliction of duty of a disciplinary proceeding concerning a normal occurrence of inaction and negligence. It is part of the November 1984 riots that had resulted in a terrible loss of lives and disturbance of public peace that had torn the fabric of civic society in Delhi. Given the evidence cited above, the Charged Officer cannot possibly be absolved of his responsibility in the failure to make effective measures to control the violence within the area under the jurisdiction. Article-I of the charge thus stands proved.

6. Article-II of the charge relates to the failure of the Charged Officer to take any action to control the mob either by the use of tear-gas, lathi- charge or firing, according to the entries made in the radio logbook of P.S. Kingsway Camp, mob violence began within the area on 01.11.1984 and continued until 04.11.1984. Both the radio logbook and the daily diary entries of the Police Station indicate that many serious instances of arson and looting were reported from areas within the jurisdiction covered by the Charged Officer. At Rana Pratap Bagh taxi stand, buses and taxis were burnt by the mob. The Gurdwara at Mukherjee Nagar was set on fire. Daily diary entries nos.A-4, A-5, A-6, A-9 and 8-73 and radio logbook entries at 8.35, 11.20, 11.30, 12.03, 12.40, 12.47, 13.20, 13.40, 15.10, 15.25, 16.02, 16.4, 17.15 and 22.25 hrs. dated 01.11.1984 indicate that no action was taken by me Charged Officer either to use lathi-charge or resort to effective firing to control the mobs as not a single person was injured in the police firing. There is no daily diary entry to this effect either on 31.10.1984 or 01.11.1984. The organised mobs could only have been prevented from indulging in criminal acts of killing of innocent people and destroying property if they had been firmly deterred, which was unfortunately not the case. Article-II of the charge thus also stands proved.

7. According to Article-III of the charge, the Charged Officer had made no effort to implement prohibitory order under section 144 Cr.P.C., which was promulgated on 31.10.1984 and the curfew that was imposed subsequently. There is not a single entry on the records of the Police Station that announcements of the promulgation of the order under section 144 Cr.P.C. in the area was made on

31.10.1984 or that of imposition of curfew on 01.11.1984. The Charged Officer has admitted in written reply to the arguments submitted by the Presenting Officer in support of the charges framed against the Charged Officer on December 14, 1998 that he made no arrest under section 188 IPC for violating the prohibitory orders. According to him, "no person was apprehended on the spot for violating the above orders due to shortage of manpower in comparison of rioters at one place." The Charged Officer has not detailed any other steps taken by him to quell the rioting in the absence of arrests. A scrutiny of the daily diary and radio logbook shows that numerous instances of rioting were reported in the areas under the command of the Charged Officer. FIR No.785, registered n 01.11.1984 at 06 p.m. mentioned the incident of burning of taxis and buses at the Rana Pratap Bagh taxi stand, the gathering large crowds indulging in looting and arson around Gurdwaras and the discovery of dead bodies at various places. Neither the FIR, registered on the basis of a report by the Charged Officer himself, nor the daily diary entries of the relevant period speak of how many teargas shells or live rounds were fired to disperse the unruly mobs. They were allowed to assemble despite the promulgation of Section 144 Cr.P.C. and the imposition of curfew. There is little evidence of any serious effort made by the Charged Officer to implement the prohibitory orders effectively within the area under his jurisdiction. Article III of the charge is, therefore, also established.

8. Article IV of the charge concerns the failure of the Charged Officer to utilize the additional force provided to him to monitor and control the incidents of rioting in his area on 1-3 November, 1984. Besides the regular force available to him at the Police Station, he had been given an additional force of 2 Sub-Inspectors, 13 Head Constables and 177 Constables from 01.11.1984 onwards. But he seems to have made inadequate use of this force. In addition, the burning of 6 Gurdwaras, cases of arson, looting and killings were reported at Rana Pratap Bagh, G.T. Karnal Road, Gujaranwala Town, Mukherjee Nagar, Kingsway Camp and Model Town. A number of factories on G.T. Karnal Road Industrial Area were also looted and burnt by rioters. Police force were little in evidence at these trouble spots. Article IV of the charge is thus also proved.

9. The Inquiry Officer has not fully taken into account the detailed documentary evidence including the meticulous entries made in the radio logbooks, in the course of the disciplinary proceedings. The entire inquiry process has thus been flawed by the selective manner in which evidence had been used in this case. For this reason, I am not inclined to accept the findings of the Inquiry Officer." (Emphasis supplied)

22. A careful reading of the inquiry report would make it clear all the four charges against the appellant were overlapping. Those were in respect of:

> (a) failure to utilise staff and to take effective preventive measures to control the violence erupting on assassination of the then Prime Minister;
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> (b) non-use of tear gas, lathi-charge and firing to control the mob;
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> (c) not making efforts to implement prohibitory orders issued under Section 144 CrPC;

(d) non-utilisation of additional force made available.

23. The Inquiry Officer found charges not proved.

While holding so, it considered evidence in detail and made certain observations which form the bedrock of exoneration. Some of those observations, which are underscored in the inquiry report extracted above, indicate:

(a) that there was no evidence led to disclose any occasion or location where lathi-charge, tear gas or firing was needed but was not resorted to;

(b) that the Presenting Officer raised a misconceived plea that the burden of proof in such cases lies on the Charged Officer;

(c) that occurrence of violent incidents or deaths in the jurisdiction of a police officer does not, ipso facto, prove his incompetence, negligence or dereliction of duty unless it is established that he was given adequate men and resources to tackle the law-and-order situation, yet he willfully did not use them with some ulterior motive;

(d) that the Presenting Officer failed to show that additional force was made available to the Charged Officer in time with information to take preventive action.

(e) that the Charged Officer claimed that on 1.11.1984 he tried his level best, with the help of force available with him, to control the situation;

he took special care to protect the residences of Sardar Richpal Singh, Nirankari Baba and Ashwani Minna, proprietor of the newspaper 'Punjab Kesri' - all prominent persons residing in the area of Kingsway Camp including important installations like telephone exchange and the radio station; on 1.11.84 he had no extra force except the meagre staff available at the police station; further, at 8:30 AM, he requested for fire brigade, which was not made available to him; the additional force made available to him, consisting of 18 persons of the CRPF, were deployed at Gurdwara Nanak Piau and the radio station, as a result, those places were saved from vandalism;

(f) that the Presenting Officer failed to refute the claim of Charged Officer regarding tackling number of incidents that took place at Gurdwara Mukherjee Nagar, along the GT Karnal Rd., Gurdwara Dhirpur, Gurdwara 'D' Block and a few residential units at Gujranwala Town, Model Town III, C.C. Colony, Rana Pratap Bagh, Nirankari Colony etc.;

(g) that the defense witness Sri DL Kashyap (DW1), who was the Assistant Commissioner of Police, Kingsway Camp and the Charged Officer's immediate superior, had deposed that in the morning of 1.11.84, SHO Durga Prasad (the C.O.) accompanied him to Rana Pratap Bagh, and they managed to disperse the unruly mob by resorting to a vigorous lathi charge. According to him, the C.O. did good work in Model Town, where he also rescued a Sikh family from the clutches of the rioters and protected a number of prominent Sikh leaders; he also ensured the safety and security of Gurdwara

Model Town, another sensitive and vulnerable place;

(h) that the reliability of DW-1 could not be doubted because he was not an accused in connection with those riots, rather he got commendations from many quarters for his good work;

(i) that Charged Officer and his men arrested as many as 106 persons during those riots, which was proved by handwritten copies of extracts drawn from relevant daily diaries (annexure III of defense statement, 286/C to 292/C);

(j) that out of eight deaths in Charged Officer's area, four were of those who, while coming from Punjab, got caught in the riots;

(k) that 53 rounds were fired at different places and at different points in time during this period with an intent to disperse the crowd, not to injure anyone; and

(l) that the statement of the Charged Officer that there was no tear gas at his disposal was not refuted by the Presenting Officer.

24. The aforesaid observations in the inquiry report would indicate that it was not a case where there was inaction on the part of the appellant in controlling the riots. Arrests were made, lathi-charge was done and firing was resorted to, though not to injure. Considering the limited force available, focus was on saving crucial installations and potential targets. The immediate senior of the appellant D L Kashyap, who appeared as a defence witness, stated that the appellant did a commendable job with the limited resources available with him. Importantly, this witness was also part of the team responsible for controlling riots but was not charge-sheeted.

Therefore, the Inquiry Officer relied on his statement.

Most importantly, there was no evidence to show that the force was sitting idle.

25. In the context of the detailed inquiry report, the disagreement note is cryptic and ignores vital aspects that were considered by the Inquiry Officer in his report, such as, (a) force was limited; (b) focus was on saving critical installations and potential targets;

(c) firing was resorted to, though not to injure; (d) DW-

1, Charged Officer's immediate senior applauded the work of the Charged Officer under the circumstances;

and (e) 106 arrests were effected as borne out from hand written notes extracted from daily diaries.

26. Interestingly, the Disciplinary Authority in his disagreement note laid emphasis on what was not done, or what could have been done, namely, (a) entries were not made in the relevant diaries regarding announcement of prohibitory order; (b) no tear gas shells were used; (c) no injury caused

to anyone in lathi-charge or police firing; (d) additional force not properly deployed; and (e) no preventive arrests effected between 31.10.1984 and 01.11.1984.

27. As regards observation of not making entries in relevant diaries regarding announcement of prohibitory orders, the statement of imputation in the context of that charge (i.e., charge no.3) makes no such allegation on the Charged Officer. Had there been a specific charge there could have been an explanation. May be such entries are made by different set of employees posted at the police station.

Be that as it may, in absence of a specific imputation in respect of not making entries of public announcement of prohibitory orders in the diaries, in our view, adverse inference ought not to have been drawn against the appellant on that count, as the same would be beyond the scope of the charge (i.e, charge no.3) when read in conjunction with the statement of imputation.

28. Regarding non-use of tear gas shells, first there ought to have been evidence that they were available for use. Dissent note does not indicate presence of evidence in that regard. Therefore, in our view, dissent on that count is not warranted.

29. Absence of gunshot injury to any of the rioters, in our view, is not a ground to assume inaction on the part of the police force. Firing at mob has dangerous consequences. If shots are fired in air to disperse the crowd, the purpose stands served. Whereas firing at the crowd may not only injure the persons targeted but also several others who may be innocent. It is a matter of common knowledge that rifle bullets travel at a high velocity and may pierce the targeted person to strike unintended targets as well. Therefore, the plea of the Charged Officer that shots were fired not with a view to injure but to disperse the mob, in our view, is a bona fide plea, which does not call for any adverse inference against him.

30. Regarding deployment of additional force, there is no evidence that such number of police personnel were to be deployed here and such number were to be deployed there. Inquiry Officer has observed that there was complete lack of evidence that police force was sitting idle and were not deployed.

Importantly, the defence plea is that deployment of forces were at important Government installations and at potential targets. Considering the scale at which riots broke out it is difficult to assume that with limited resources, as is found in the inquiry report, deployment of forces could be across the entire area under the command of the concerned police station.

Therefore, in our view, dissent on this count also is unwarranted, particularly, in absence of evidence that police force was sitting idle with no deployment orders.

31. As regards allegation that no preventive arrests were made by the Charged Officer, suffice it to say that it is an allegation easy to make but difficult to prove. There is no evidence cited in the disagreement note that reports of a plan to indulge in rioting came to the knowledge of the Charged Officer but he took no preventive action. Admittedly, riots broke out suddenly as soon as

information of assassination of the then Prime Minister spread.

Thus, absence of preventive arrest is not a ground to believe that there was inaction on the part of the Charged Officer. Notably, as per observations in the inquiry report, arrests were effected. May not be by way of preventive measure but as a response to rioting.

32. Besides above, we note that the disciplinary proceeding against the appellant was initiated after 8 years of the incident when by that time the appellant had already earned his promotion. We are conscious of the law that promotion does not automatically wipe out any misconduct of a delinquent employee, particularly when it comes to light later. Here also, police personnel were put in the dock when a Committee, appointed later, reported laxity on the part of police in handling 1984 Riots. No doubt, misconduct may arise out of an act or an omission.

Where it relates to an alleged omission, greater caution is required before putting an officer in the dock. In case of such nature, the disciplinary authority may also have to empathise with the situation in which the charged officer was placed at the relevant time. Because in hindsight it is easy to say that things could have been handled better if they had been done this way, or that way. But if this alone is taken as a basis to punish police personnel who, though may not have delivered the desired result, have done their best, commensurate to the resources available to them at the relevant time, grave injustice would be done. Instant case appears to be of that kind.

33. For all the reasons above, we are of the considered view that it would be too harsh upon the appellant to undergo a fresh exercise of disagreement note and consequential process, particularly when the incident is over 40 years old and the appellant has demitted office long time back.

34. The appeal is, therefore, allowed. The order of the High Court giving liberty to the disciplinary authority to issue a fresh disagreement note, and proceed accordingly, is set aside. The writ petition of the appellant stands allowed. The order of the High Court to the extent it quashed the order of punishment is affirmed. The appellant shall be entitled to all consequential benefits including revision of pension, if any payable, accordingly.

35. Pending applications, if any, stand disposed of.

36. There is no order as to costs.

.....J. (Pamidighantam Sri Narasimha) .....J. (Manoj Misra) New Delhi;

April 23, 2025