Before Rajive Bhalla & Amol Rattan Singh, JJ.

CHAMAN LAL GOYAL—*Petitioner*

versus

STATE OF PUNJAB AND ORS.— *Respondents*

CWP No. 15674 of 1995

March 01, 2016

A. Constitution of India, 1950— Art. 226— Punjab Civil Services (Punishment and Appeal) Rules, 1970, Rule 8— Disciplinary proceedings— Punishment Compulsory retirement— Judicial review— Procedural irregularities— Would pale into insignificance, if the substance of the charges is found to be correct, where charges are of such a serious nature.

Held, that procedural irregularities would essentially pale into insignificance, if the substance of the charges is actually found to be correct, where, to repeat, the charges are of such a serious nature.

(Para 35)

B. Constitution of India, 1950— Art. 226— Punjab Civil Services (Punishment and Appeal) Rules, 1970, Rule 8 — Disciplinary proceedings— Procedural irregularities—Punishment —Compulsory retirement —Judicial review— If charges of loose administration and allowing hardcore prisoners to stay in the same barrack, which was allegedly a less secure barrack than barrack No. 6 stand proved against the petitioner, then procedural lacunas, as long as they do not wholly prejudice the petitioner with regard to the above findings, are not to be made the basis of exoneration of the petitioner.

Held, that in our opinion, if the charges of loose administration and allowing hardcore prisoners to stay in the same barrack, which was allegedly a less secure barrack than barrack No.6, are charges which stand proved against the petitioner, then the procedural lacunas, as long as they do not wholly prejudice the petitioner with regard to the above findings, are not to be made the basis of exoneration of the petitioner, when the charges against him and his co-delinquents are, to repeat, of such a serious nature.

(Para 36)

Chaman Lal Goyal, *petitioner*, in person.

Gurinder Pal Singh, Addl. A.G, Punjab.

D.S. Patwalia, Advocate.

AMOL RATTAN SINGH, J.

(1) The petitioner has challenged the order dated 29.09.1995 (Annexure P-24), passed by the 1st respondent, imposing a punishment of compulsory retirement upon him. He has also challenged the charge sheet dated 07.07.1992 pursuant to which an enquiry proceeding was held, leading to the passing of the order. By this petition, he seeks quashing of the disciplinary proceedings and the order and thereafter, the grant of all consequential benefits flowing from the fact that such an order would be considered to have never been passed.

A brief background of the petitioners' service in the Department of Jails, Punjab, as given in the petition, would be in order, before reproducing the impugned order by which the petitioner has been imposed the aforesaid punishment.

(2) The petitioner initially joined service as a Clerk in the respondent- State on 22.11.1957 and was promoted as an Assistant in January, 1963. Thereafter, he competed in an open competition for selection to the post of Deputy Superintendent (Jails), Grade-II and was selected for appointment by the Punjab Public Service Commission, pursuant to which he was appointed to the said post by the respondent-Government on 01.01.1969, in the Punjab Prisons Service (Class-II). He was promoted as a Superintendent, District Jail, w.e.f. 15.03.1980 and then promoted to the Punjab Prisons State Service (Class- I) on 11.12.1986.

As per the petitioner, uptil 31.03.1992, he had earned “Very Good/Outstanding” gradings in his ACRs, from his superiors, with no adverse entry at all in his service record. He is also stated to have been issued a number of appreciation letters by his superiors. He is stated to have been posted to important and challenging assignments, including those of Superintendent of sensitive jails, where hardcore terrorists and criminals were confined. According to him, these assignments were performed by him to the best of his ability, even at the cost of risk to his life and that of his family members, as, during the course of these postings, he is stated to have received “scores of threats” to his life.

(3) These facts, as given above, are generally accepted by the respondents in their reply, though the factum of his record having remained unblemished is refuted by them, even for the period uptil

1992, owing to the fact that on the night of January 1/2, 1987, eight terrorists attempted to escape from the Maximum Security Jail, at Nabha, where he was earlier posted as Superintendent, which is the primary reason that the petitioner was charge- sheeted, on 07.07.1992.

In fact, it is as a result of this charge sheet that the petitioner was eventually imposed the punishment of compulsory retirement, vide the order impugned in the present petition.

(4) With the above background given, we come to the charges against the petitioner, which have been reproduced in the impugned order, *in extenso*, as under:-

GOVERNMENT OF PUNJAB

DEPARTMENT OF HOME AFFAIRS AND JUSTICE

(-----BRANCH)

ORDER

Whereas Shri Chaman Lal Goyal, Principal, Jail Training school, Patiala, the then Superintendent Maximum Security Jail, Nabha was chargesheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for the following charges vide Government Memo No. 13/1/87-1J/9281 dated 07.07.1992 in connection with the attempted escape of 8 undertrial terrorist prisoners on the night of 1/2-1-87 from the Maximum Security Jail, Nabha:-

1. That inside that jail, there was loose administration with regard to Supervision of Prisoners and physical verification of Cells.

2. That the Prisoners had been given Special concessions against rules instructions.

3. That the building of the jail was in dilapidated condition. No special attention was given for its repair.

4. That on 20th November, 1986, 4 dangerous prisoners who were most safe in Barrack No. 6 were transferred to less safe Barrack No. 7 as per their wish. Barrack No. 6 consists of 20 Cells. The prisoners were kept in the said Barrack separately. On their request they were transferred to Barrack No. 7. There they planned their escape. Instead of being kept separately in Barrack No. 7, these prisoners were

allowed to remain together in one room. They broke down the wall. On 6th December, 1986, one more prisoner who had come there after his transfer from Central Jail Ferozepur, was kept in Barack No. 7 as per his wish. There all these prisoners planned to escape from the prison. As a result of this carelessness persons were killed.

5. That barrack close register had not been maintained/was not maintained.

6. That officials of the prison were frequently mixing with the prisoners and often took intoxicating items from them. This was result of loose administration.

The impugned order further reads as follows:-

WHEREAS Shri Chaman Lal Goyal submitted his reply of the chargesheet which was considered/examined by the competent authority at Government level and found unsatisfactory.

WHEREAS it was decided to hold a regular Departmental Inquiry and accordingly Shri P.S. Aujla, I.A.S., the then Joint Secretary, Political, was appointed as Enquiry Officer in this case vide Government order No. 213/1/87-IJ/20482-67 dated 03.08.1993.

WHEREAS in CWP No. 10268 of 1993 filed by Shri Chamal Lal Goyal the Hon'ble Punjab and Haryana High Court at Chandigarh quashed the charge-sheet and appointment of Inquiry Officer vide its judgement dated 25.08.1994. Government filed an S.L.P. against this judgement of the Hon'ble High Court in Supreme Court of India. The Hon'ble Supreme Court while allowing the said S.L.P. on 31.01.1995 directed the State Government to conclude the inquiry against the respondent, Shri C.L.Goyal, within eight months from the date of judgement i.e. 31.01.1995. Hon'ble Supreme Court also observed that if the inquiry is not concluded and final orders are not passed within the aforesaid period, the inquiry shall be deemed to have been dropped.

WHERAS Enquiry Officer submitted his Enquiry report to the Government vide letter No. PA/JSH-Cum-I.O.-95/19430 dated 03.07.1995. On the basis of the Enquiry Report, the

Enquiry Officer held charges No. (1) and (2); to be fully proved and charges No. (3) and (6) to have been partially proved, while charges No. (4) and (5) have been held to be not proved against Shri Chaman Lal Goyal.

WHEREAS the above said Shri Chaman Lal Goyal, Principal Jail Training School, Patiala was issued one month's notice alongwith a copy of Enquiry Report to explain his position in writing vide Government letter No. 13/1/87-IJ/14041 dated 24.07.1995 in view of the findings of the Enquiry Officer in his Inquiry Report.

WHEREAS Shri Chaman Lal Goyal submitted his reply to the Notice on 23.08.1995 vide his letter no. 531 dated 23.08.1995. WHEREAS the reply of Shri Chaman Lal Goyal was considered by the competent authority and the same had been found to be unsatisfactory.

WHEREAS Government decided, in principle, to compulsorily retire Shri Chaman Lal Goyal from service with immediate effect.

AND WHEREAS the Punjab Public Service Commission accorded their concurrance to the proposed punishment to Shri Chaman Lal Goyal for his compulsory retirement from service with immediate effect.

Now, therefore, the Governor of Punjab under the provisions of Punjab Prisons State Services (Class-I) Rules, 1979, Punjab Civil Services (Punishment and Appeal) Rules, 1970 and other powers enabling him in this behalf, is pleased to impose the penality of compulsory retirement upon the said Shri Chaman Lal Goyal with immediate effect.

Dated Chandigarh
the 29th Sep.1995

M.S.Chahal
Principal Secretary to
Government, Punjab Department
of Home Affairs & Justice

Thus, as per the impugned order, the first two charges, with regard to loose administration and of giving special concessions to prisoners against rules and instructions, had been fully proved; the 3rd charge with regard to the building of the jail being in a dilapidated condition, with no attention to its repair, to have been partially proved;

the 6th charge with regard to the officials of the prison frequently mixing with the prisoners and even taking intoxicating items from them, has also been partially proved; charge no. 4, i.e. the charge of the attempted escape of the petitioners being due to their having been transferred, on their request, to a common cell, where they planned the escape, to have not been proved; and the 5th charge, with regard to non-maintenance of the register pertaining to the closing of barracks, also to have not been proved.

The petitioner having been issued a show cause notice to explain his position with regard to the findings of the Enquiry Officer and he having replied to the same, the reply was not found to be satisfactory. Consequently, the punishment of compulsory retirement from service was imposed upon him, by respondent no. 1.

(5) Though the petitioner has challenged the enquiry proceedings as being vitiated on various grounds, his challenge is largely on the ground of malafides on the part of respondent no.2 (the Inspector General of Prisons), as also the Enquiry Officer (respondent No.3). That part will be considered by us later.

At this stage, it is necessary to notice that, as stated in the petition also, though the enquiry report dated 03.07.1995 (Annexure P-22 with the petition), holds the petitioner and his co-accused, Shri S.S. Thind (the Deputy Superintendent of the same Jail at Nabha), both guilty of charge no.4, the impugned order compulsorily retiring the petitioner however, states that the said charge has not been proved.

This charge, as already said earlier, is the charge out of which the charge sheet against the petitioner actually arises, of four dangerous prisoners attempting to escape from the Maximum Security Jail, as a result of their collective planning, owing to the fact that they were all transferred from Barrack No.6 to the less safe Barrack No.7, about one month and 10 days before the date of the attempted escape.

It is, therefore, naturally, contended in the writ petition as well as argued by the petitioner, that once the said charge was held to have not been proved by the punishing authority, then the lesser charges of the building not having been maintained properly (leading to easy breakage of the wall etc.) and of loose administration, would lose significance and therefore, the very basis of the punishment order is rendered to be without any foundation.

However, after the present petition was filed on 30.10.1995, the written statement of the respondent-Government (respondent no.1) was

filed on 11.12.1995, annexing alongwith it Annexure R-2; which is a letter dated 10.11.1995, addressed by the Deputy Secretary, Home (G), to the petitioner and is to the following effect:-

"GOVERNMENT OF PUNJAB

DEPARTMENT OF HOME AFFAIRS AND JUSTICE
(JAILS BRANCH)

To

Shri Chaman Lal Goyal,
Principal Jail Training School, Patiala (Retired),
House No.1607-A, Sector-38B,
Chandigarh.

Memo No.13/1/87/IJ/

Dated, Chandigarh, the

Subject: Compulsory retirement of Sh. Chaman Lal Goyal, Principal Jail Training School, Patiala.

Reference this department letter No.13/1/87/IJ/17723 dated 29.9.1995 on the subject noted above.

2. The letter under reference contained a bonafide mistake. A copy of substituted letter referred to above bearing the same number and date rectifying the mistake is enclosed for your information.

Sd/-
Deputy Secretary
Home (G).

Endst. No.13/1/87-IJ/19584 Dated,
Chandigarh 10-11-95"

(Copies of this letter have also been addressed to various authorities).

(6) Annexed alongwith the said letter, is an order shown to be also dated 29.09.1995, i.e. the same date as is given on the impugned order (Annexure P-24 with the petition), passed by the Principal Secretary to the Government of Punjab, Department of Home Affairs and Justice, (the same disciplinary authority as had passed the original punishment order, Annexure P- 24).

This substituted order remains the same in other clauses, as the one already reproduced earlier in the judgment. However, it contains 2 changes, of which the more important one is contained in the 4th sub-paragraph (after reproduction of the charges against the petitioner):-

> "WHEREAS Inquiry Officer submitted his Enquiry report to the Government vide letter No. PA/JSH-Cum-I.O.-95/19430 dated 3.7.1995. On the basis of the Enquiry Report, the Enquiry Officer held charges No.(1) and (2): to be fully proved and charge No.4 to be mainly proved and charge no.(3) & (6) to have been partially proved, while charge No.5 has been held to be not proved against Shri Chaman Lal Goyal."
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> Hence, whereas the original order dated 29.09.1995 showed charges No.1 and 2 to have been fully proved against the petitioner, charges no.3 and 6 to have been partially proved and charges no.4 and 5 to have been not proved, the substituted order of the same date, while holding the other charges to be proved/partially proved as per the original order, shows charge no.4 to have been mainly proved against the petitioner, which is as per the report of the enquiry officer, Annexure P-22.

The second change in the order, is that the 6th sub-paragraph (after the charges have been reproduced), has been omitted. In the original order, the said sub-paragraph stated that the petitioner had submitted his reply to the notice issued to him on 24.07.1995.

The rest of the order is to the same effect and is, in fact, *ad verbatim* the same as the original order.

However, as even put specifically to the petitioner by this Court, he has not challenged the 2nd (substituted) order by amending the petition. He has, instead, filed CROCP No.32 of 1995, which we shall consider separately.

(7) Before we go into the grounds of challenge that the petitioner has taken to challenge the impugned order, it is necessary to notice here that the petitioner had initially challenged the charge sheet issued to him on 07.07.1992 (Annexure P-1), by way CWP No.10268 of 1993, which was allowed by a co- ordinate Bench, vide its judgment dated 25.08.1994 (Annexure P-3) and the charge sheet was quashed.

The respondent-State filed SLP (C) No.18536 of 1994 against

the said judgment (which was converted into Civil Appeal No.1102 of 1995 (Annexure P-4). The hon'ble Supreme Court set aside the judgment of this Court and vide its order dated 31.01.1995, had held as follows:-

> "Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

It was held as above, in view of what was observed in the paragraph immediately preceding the aforesaid paragraph of the judgment and reads as under:-

> "The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R.Antulay V.R.S. Nayak & Anr. (1992 (1) S.C.C.225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgement, this court mentioned the propositions emerging from the several decisions considered therein and

> observed that "ultimately the court has to balance and weigh the several relevant factors- balancing test or balancing process- and determine in each case whether the right to speedy trial has been denied in a given case." It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that it is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case".

On that reasoning the enquiry proceedings, which were seriously initiated five and a half years after the attempted jail break, were ordered to be continued, the charges obviously being serious.

Consequently, the impugned order has been passed, on conclusion of enquiry proceedings.

(7-A) Therefore, we are now required to consider the challenge by the petitioner, to the enquiry proceedings and the impugned order, keeping in mind the fact that the charge sheet itself has already been once considered by the Supreme Court and the enquiry proceedings were continued on the last Court holding that the enquiry is required to be conducted. Hence, we are not to examine the delay in instituting the enquiry proceedings but only the other grounds raised by the petitioner.

(8) The petitioner has challenged the impugned order on various grounds, the gist of which is given as follows:-

> i) That the enquiry was initiated against the petitioner due to and with, the biased attitude of Shri B. S. Sandhu, the then Inspector General of Prisons, Punjab (respondent no.2), as he was inimical towards the petitioner and wanted to harm him and therefore he (respondent no.2) manipulated the entire facts and circumstances in such a manner, that he got the enquiry initiated against the petitioner, in July 1992, i.e. more than five and a half years after the attempted escape of convicts from the jail.
>
> It is alleged that the malafides on the part of B.S. Sandhu

are obvious from the fact that for 36 years the petitioner had an unblemished record and it is only when he became a threat to the promotion of respondent no.2, that he was made a target of the enquiry, in order to ensure that he did not come in the way of Shri Sandhu remaining as the Head of the Department for a long uninterrupted stint.

ii) That respondent no.2 also got respondent no.3 (Shri P.S. Aujla IAS) appointed as the Enquiry Officer, who was related, by marriages of close relatives, to respondent no.2; therefore, as per the petitioner, the Enquiry Officer was also wholly biased against the petitioner and conducted the enquiry at the bidding of respondent no.2.

iii) That the Enquiry Officer (respondent no.3) violated basic enquiry procedure and further, humiliated the petitioner during the enquiry proceedings and did not afford him reasonable opportunity to defend himself, despite the petitioner making various applications to him and showing him (respondent no.3) various irregularities/omissions in the proceedings.

Such irregularities also included the fact that after closing the arguments in the enquiry, the Enquiry Officer took respondent no.2 alongwith him to visit the jail at Nabha, in his own car.

The petitioner also made representation to the Government in this regard, and these communications, both, to the Government as also to the Enquiry Officer, have also been annexed with the petition.

iv) That the Presenting Officer in the enquiry proceedings was one Shri G.S. Gill, who was posted from 1981 to July 1986 as Deputy Superintendent, District Jail, Nabha and during the last part of that tenure, he worked as a Deputy Superintendent subordinate to the petitioner, who himself (petitioner) was posted to the Nabha Jail only for five months, from 18.07.1986 to 25.12.1986.

According to the petitioner, since the said G.S. Gill had remained posted at Nabha for more than six months, he too was, in fact, required to be charge sheeted, as all the allegations made against the petitioner are equally applicable to Shri Gill.

Hence, whatever was not favourable to Shri Gill, was withheld by him, as Presenting Officer, in the enquiry proceedings.

v) That the Chief Minister of the State is the competent authority to take a final decision in disciplinary proceedings against a Class-I officer, but in the petitioners' case, the matter was never brought to the personal knowledge of the Chief Minister and as and when files were required to be examined by him, they were actually examined by his (Chief Ministers') staff, i.e. his Principal Secretary etc., with file notings to the effect that the "Chief Minister has proposed" or the "Chief Minister has approved" etc.

Thus, as per the petitioner, there was no application of mind at the level of the competent authority, at any stage.

vi) That before taking any severe action against the petitioner, the matter was statutorily required to be placed before the Punjab Public Service Commission for its advice and though the matter was put up to the Commission on 18.09.1995, no time whatsoever was given to the Commission, or was taken by the Commission, to examine the 2000 odd pages of the disciplinary proceedings, with the case file having been personally carried by respondent no.4, i.e. Shri B.S.Sandhu, to the Chairman of the Commission, after which it was immediately signed by him, with "undue enthusiasm", (within a day).

As such, the purpose of cross-checking by the Commission, was completely defeated.

vii) That Rule 12 of the Punjab Civil Services (Punishment and Appeal) Rules 1970, lays down the manner in which common disciplinary proceedings are to be initiated/held against two or more Government employees. Accordingly, as per the petitioner, in the present case, common enquiry proceedings were initiated against three officers, i.e. the petitioner, Shri S.S. Thind and Shri H.S.Bal (both Deputy Superintendents posted as such at the time of the attempted escape by the prisoners).

However, prosecution witnesses were examined in the enquiry proceedings without indicating to them as to which charge-sheeted employee they were being examined in

respect of, and in support of which charge they were deposing.

Further, it is alleged that at the defence stage, the Enquiry Officer “fabricated the enquiry” with malafide intention.

It is further contained in the petition that the stand taken by the State before the hon'ble Supreme Court (in its appeal against the Division Bench judgment quashing the enquiry proceedings), was that it was an enquiry held against a single person (the petitioner); however, the enquiry was actually initiated as common proceedings against three officers, with the petitioner specifically singled out later, separately, by 'fabricating the enquiry' at the defence stage.

The petitioner has also alleged in this regard that such fabrication and singling him out, was on account of the fact that the other two officers, i.e. Shri Thind and Shri Bal, were both Jat Sikhs, whereas the petitioner being a non-Jat Sikh and a Hindu, was the “only odd man out”, who has been held guilty without anything being proved against him.

viii) That though the Supreme Court, vide its order dated 31.01.1995, had directed that the disciplinary proceedings be completed within eight months of that date, the impugned order has been passed on 29.09.1995, which is, according to the petitioner, three days after the time limit had run out on 26.09.1995.

This calculation, by the petitioner, is based on the definition of the word 'month', in the law lexicon, which states that when the word 'month' is used without qualification, it means a lunar month and by that calculation, 8 months concluded on 26.09.1995.

In fact, as per the petitioner, the impugned order deserves to be set aside, on this ground alone.

ix) That the punishment of compulsory retirement is unduly harsh, especially when, as per the original order dated 29.09.1995, the main charge with regard to the attempted escape of prisoners, remained unproved.

Thus, weighed against the fact that the petitioner had earned Very Good/Outstanding gradings from his superiors, with no adverse entry in his service record for 36 years, the

punishment should have been imposed keeping this fact in mind, which has not been done.

(9) On the issue of malafides, the petition highlights various incidents/series of incidents, to try and show that the petitioner was actually made a target of ire of respondent no.2.

It is first stated that Shri T.C.Katoch, an honest and efficient officer, was made to proceed on leave as the Inspector General of Prisons in June 1986 and respondent no.2 was promoted and posted in his place. A post of Officer on Special Duty was specially created to adjust Shri Katoch later. Unfortunately, Shri Katoch was later short dead on 10.01.1987, "allegedly by terrorists" (as per the petition) and the petitioner was their next target.

On the malafides attributable to respondent no.2, the petition further states that earlier also, due to his political connections, respondent no.2 had "bagged the post of Managing Director of the Punjab Tourism Development Corporation but was repatriated to the Jail Department, on account of his failure" on the deputation post.

Further, in the petition, it has been alleged against respondent no.2, that in view of the "mandatory provision" that the post of Inspector General of Prisons, Punjab, cannot be held by a single individual for more than five years, he started manipulating to retain the post from 27.06.1986 till the date that he was to retire from service, i.e. 31.03.1997 and his *modus operandi* was to tarnish the image of possible rivals, i.e. those who were immediately junior to him, including one Shri M.L. Sandhu and thereafter, the petitioner, who was next in line. Allegedly, respondent no.2 first got two successive extensions for one year each, in the years 1991 and 1992 because of his political connections.

A writ petition filed by the said M.L. Sandhu, immediately before his retirement in April 1993, against the continuation of respondent no.2, has also been referred to in the petition.

(10) As regards the petitioner, since he was the next senior most eligible officer for promotion as Inspector General of Prisons, after the retirement of M.L. Sandhu on 30.04.1993, and since the petitioner had also filed CWP No.735 of 1993, which was clubbed with the petition filed by Shri M.L. Sandhu (CWP No.4794 of 1993), hence, respondent no.2 allegedly got the petitioner charge sheeted, to even block his promotion as Deputy Inspector General of Prisons. Resultantly, the petitioner was posted agianst the post of DIG, Prisons, on 15.05.1993,

without actually being promoted as such.

Subsequently, the petitioner was even got removed from that posting and was posted to Patiala and still further, adverse remarks were given in his ACRs for the years 1992-93, 1993-94 and 1994-95.

Thus, the charges resulting in the impugned order were made against the petitioner five and a half years after the attempted jail break, only to counter the petitioners' move to allegedly 'dis-lodge' respondent no.2 from the post of Inspector General of Prisons.

Hence, on the issue of the malafide intention in initiating disciplinary proceedings against him five and half years after the incident, the petitioner has alleged that respondent no.2 was fully responsible, in order to ensure that his own position as Inspector General of Prisons of Punjab, was retained till he superannuated from service.

(11) As regards the detail of irregularities in the disciplinary proceedings themselves, the petitioner has raised various contentions which run as follows:-

> i) That (as already noticed) though common disciplinary proceedings were initiated against himself, Shri H.S. Bal and Shri S.S. Thind (i.e. his predecessor as Superintendent and his Deputy Superintendent, respectively) and the evidence in support of the charges was adduced jointly, however, after the re-start of the enquiry proceedings (upon the setting aside of the judgment of this Court, by the Supreme Court), the proceedings were split up, in order to ensure that the petitioner would not be able to cross-examine the said officers, when they led their evidence in defence.
>
> ii) That though the petitioner summoned necessary documents, respondent no.2 claimed privilege in respect of most of these documents and instead submitted his own affidavit in lieu thereof.
>
> (This affidavit has also been placed on record by the petitioner as a part of Annexure P-23 and a perusal thereof shows that respondent no.2 claimed privilege in respect of placing certain intelligence reports, which were stated by him to be “unpublished official record relating to the affairs of the State”, including comments and opinions of officers,

in “official confidence”).

It is contended by the petitioner that respondent no.2 was not empowered to claim privilege, in terms of Section 123 of the Indian Evidence Act, as such privilege could only be claimed by Government and these documents were actually in possession of the Government, which had not claimed any such privilege.

iii) That Shri B.S. Sandhu, respondent no.2, was not produced as a witness by the department, even though the most damaging evidence against the petitioner was the report of Shri Sandhu, dated 09.01.1987, even as per the judgment of the hon'ble Supreme Court.

According to the petitioner, respondent no.2 was not produced deliberately, though the petitioner made a request to the Enquiry Officer that he be summoned as a “Court witness”. Consequently, the petitioner was forced to summon him as a defence witness, in order to ensure that relevant questions were put to him and necessary documents summoned, which would “demolish the charges” and the basis of the said report dated 09.01.1987.

iv) That the petitioner was not allowed by the Enquiry Officer (respondent no.3), to put certain relevant questions to respondent no.2, on the ground that such questions could not be put to the petitioners' own witness. For that reason, the petitioner requested that respondent no.2 be declared to be hostile, which was also in view of the fact that respondent no.2 allegedly starting dictating his report dated 09.01.1987, which was recorded at the instance of the Enquiry Officer. Therefore, he requested that respondent no.2 be declared hostile, which again was not permitted by respondent no.3.

As per the petitioner, the said report (dated 09.01.1987) was not on the record of the disciplinary proceedings earlier and was not even cited as a document to be relied upon by the State or by the petitioner. However, it was ordered to be exhibited and thereby, allegedly, a gap was allowed to be filled in by way of fresh evidence on record.

It is contended that such evidence is prohibited to be placed on record, in view of the proviso to sub-rule 15 of Rule 8 of

the Punishment and Appeal Rules, 1970.

v) That the Enquiry Officer declined to summon some of the witnesses sought to be summoned by the petitioner, on the ground that their testimony would not serve any purpose, in view of the privilege claimed qua the documents sought to be summoned. Two of such witnesses have been given to be Shri S.K.Verma, Deputy Inspector General of Police (Crime Branch) and Shri Brij Mohan, retired Deputy Superintendent of Police, as also some unnamed security/intelligence officials.

The petitioner had also sought to summon his predecessor, Shri G.S.Grewal, as a defence witness but that request was declined on the ground that as he was not present at the time of occurrence, i.e. the attempted jail break, his statement would not be relevant, which was accepted by the Enquiry Officer, instead of compelling the witness to appear, who, according to the petitioner, was a most relevant witness with regard to the physical condition of Barracks No.6 and 7 and with regard to maintenance of registers and other relevant matters, i.e. holding of 'Akhand Paaths', during the tenure of the petitioners' said predecessor.

Further, the six surviving prisoners as had attempted the jail break, were also sought to be summoned by the petitioner but were not examined on the ground that one of them recorded a note that he did not wish to come. The Enquiry Officer allegedly allowed the written request of the said prisoner (named Balwinder Singh), on the ground that his statement could prejudice his defence in the FIR lodged against him in the attempted jail break case.

Further, other official witnesses, who were relevant and had even retired from service, were also not allowed to be summoned, only in order to prejudice the defence of the petitioner (The orders of the Enquiry Officer, in this regard, are part of the enquiry proceedings annexed with the petition).

vi) That despite the petitioner serving Shri S.S. Thind (also charged with the same charges) with 'Dasti' summons for appearing as a defence witness, he was not examined even upon his appearance on 22.04.1995, on the plea that there

was no time left. Subsequently he never turned up on the dates that he was summoned.

vii) That Shri G.S. Gill, who was Deputy Superintendent for most of the short tenure of the petitioner as Superintendent and subsequently was also the Superintendent of the Jail immediately after the incident, and therefore the "author and custodian of the record and all the charges levelled against the petitioner" and his co-delinquent, was made the Presenting Officer, upon this fact "dawning upon the authorities", thereby replacing the previous Presenting Officer (Noticed earlier also).

Consequently, the Enquiry Officer refused to examine the Presenting Officer.

viii) The bias of the Enquiry Officer, as per the petitioner, is manifest from the fact that even applications with regard to irregularities, or requests made to him, were not accepted, due to which the petitioner had to send them by registered post.

This was in addition to the fact that the petitioner was (allegedly) insulted and humiliated at every stage of the enquiry.

ix) That the first defence statement of the petitioner, submitted on 28.07.1994, was also allegedly rejected by the Enquiry Officer without application of mind.

Other than the above, it is alleged in the petition that basic principles of natural justice were not followed by the Enquiry Officer, which the petitioner had to accept at that time, being in no position to continuously challenge every action of respondent no.3.

(12) With regard to the threats made to him by terrorists, the petitioner has annexed with the petition a letter dated 10.01.1987, alleged to have been written by the "Khalistan Commando Force", threatening him and his Deputy Superintendent, as also one other Superintendent (referred to as Grewal in the letter), on account of certain actions taken by them in the course of their duties. He has also annexed a letter from the IGP (Intelligence) Punjab, to the Senior Superintendents of Police, Bathinda, Sangrur and Patiala, informing them (SSPs) of the threat to the petitioner and other persons.

The above, thus, are the facts and the main grounds of challenge, narrated in the petition.

(13) The four respondents, each filed separate replies to the writ petition.

In the written statement of the Government, i.e. respondent No.1, preliminary objections were taken with regard to what is described therein as "uncalled for and unnecessary allegations in the petition". The judgment of the Supreme Court, in the SLP against the judgment of this Court, has been referred to in the reply of the 1st respondent, with regard to the charge of malafides made by the petitioner and the following passage of the judgment has been quoted:-

> "Now coming to the charge of malafides also, it must be stated that the said charge was made in a vague manner in the writ petition. It was not specified which officer was ill-disposed towards the respondent and how and in what manner did he manage to see that the charges are served upon the respondent when the respondent's case was to come up for consideration for promotion. The appellants say that the respondent's case was to come up for consideration for promotion. The appellants say that the respondent's case was not to come up for consideration for promotion in the year 1992 at all – not even in 1993. It is also stated by the learned counsel for the appellants that pursuant to the impugned order, the respondent's case was considered by the DPC but it found him not fit for promotion. Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person as nominee so as to enable him to answer the charge against him, the charge of malafides cannot be sustained. It is significant to notice that the respondent has not attributed any malaifides to the Inspector General of Prisons who made his report dated January 9, 1987. In this report, the Inspector General of Prisons had found the respondent responsible for the incident- relevant portions extracted hereinabove- and recommended his suspension pending enquiry."

It is thus contended that the main charge of malafides against respondent No.2, not having been taken in the earlier writ petition and the Apex Court having specifically held that no malafides are attributable to respondent No.2, the entire basis of the writ petition is

without any foundation and as such, deserves to be dismissed.

Other than that, the preliminary objections state that as the punishment imposed is after due enquiry proceedings, as per the procedure and the order of compulsory retirement having been acted upon, this Court would not now interfere with the same.

It is further stated that since the petitioner has raised disputed questions of fact, which have been gone into by the Enquiry Officer, this Court in exercise of its extraordinary jurisdiction, would not interfere with the same.

(14) Referring to the petitioners' reproduction of some notings of the Government, a judgment of the Supreme Court in ***Puran Jeet Singh*** *versus* ***U.T.Chandigarh***[1] has also been cited, wherein it was held that it was improper on the part of the petitioner in that case, to produce the notings in Court proceedings, as firstly, it was not known as to how they came into his possession and secondly, "as a responsible officer, he ought to know that noting in the departmental file did not create any rights in his favour".

(15) On merits, the reply of respondent No.1 firstly refers to the adverse record of the petitioner from the years 1992 to 1995 and the fact that it was on account of his lack of supervision etc. that a serious attempt of jail break was made.

In defence of respondent No.2 (the I.G. Prisons), it has been stated that he did not manipulate any postings and that all postings granted to him were as per merit, further referring to laudatory observations made by the Chairman of the Punjab Tourism Development Corporation, where respondent No.2 was posted for a while.

Similarly, the continuation of respondent no.2 as IG Prisons beyond a specific period, has also been defended on the ground of administrative exigencies and necessity etc. It is also stated that the said post is to be filled up, in terms of the relevant service rules, by selection from amongst officers of the Prisons Department and on the date that Shri M.L. Sandhu (an officer senior to him, referred to by the petitioner, as already noticed) retired, the petitioner did not have the requisite experience of seven years for promotion as IG.

The allegations of malafides against the 2nd respondent have thus

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[1] (JT 1994 (6) SC 239)

been refuted, in the Governments' reply. The reply also states that the allegations of proximity of respondent No.2 to the Chief Minister were also made by the petitioner in an earlier litigation (CWP No.735 of 1994), in relation to (another) former Chief Minister, the implication obviously being that the petitioner is in the habit of making such allegations.

(16) It is necessary to refer to paragraph 13 of the States' reply, in relation to the allegations of the petitioner that the Enquiry Officer (respondent No.3) was appointed at the instance of respondent No.2, who as per the petitioner, are related to each other, through marriage of a niece etc.

As per the reply, respondent No.3 was appointed as an Enquiry Officer on the suggestion of one Mrs. Jyotsna Khanna, IAS, the Secretary to the Government of Punjab at that time, in the Department of Jails and Justice, which was approved by the Chief Secretary and also agreed to by the Chief Minister of the State. An order appointing him was passed on 03.08.1993.

Reference has also been made to a letter dated 21.04.1995, written by the Secretary, Health, Government of Punjab, to the Chief Secretary, regarding relieving respondent No.3 of the charge of Enquiry Officer, in view of the heavy nature of his regular duties as Joint Secretary, Health. However, in view of the fact that the enquiry was at an advanced stage and had to be completed within a period of eight months, as per the orders of the hon'ble Supreme Court, it was not considered feasible to remove the Enquiry Officer at that stage, despite protests by the petitioner, who, it has been stated was behaving in a completely irresponsible manner.

The written statement also states that even before the Supreme Court, nothing had been said by the petitioner against the Enquiry Officer and as such, his allegations against him, after that, were only an attempt to ensure that the enquiry was not completed within the stipulated period given by the Apex Court.

The contents of a DO letter written by respondent No.3 (Enquiry Officer) Shri P.S. Aujla, to the Principal Secretary, Department of Jails and Justice, on 28.04.1995, asking to be relieved from the responsibility of Enquiry Officer, in view of the allegations made by the petitioner, have also been reproduced in the Governments' reply. Amongst other things, respondent No.3 has stated in the reply, on the allegation of him being related to respondent No.2, as follows:-

> "3. In the present application Mr. Goyal has also alluded to my relationship with Mr. B.S. Sandhu, I.G. Prisons, Punjab. I have come to learn about this relationship through Mr. Goyal only."

One of the interim orders dated 13.05.1995, of the Enquiry Officer, in the enquiry proceedings, has also been reproduced, in which the Enquiry Officer has referred to his request for being relieved of the charge, in view of the allegations made, especially with regard to his alleged relationship with respondent No.2. In the said order, the Enquiry Officer also stated that the Government had declined his request for being relieved and as such he has no option but to continue with the proceedings even though he had resisted doing so from 21.04.1995 till 04.05.1995, i.e. till the Government refused to accede to his request.

Thus, in view of the above, the States' reply goes on to effectively say that there was actually no bias of respondent No.3 either, towards the petitioner.

(17) With regard to the petitioners' allegation that the Presenting Officer, G.S. Gill, was actually also responsible for the attempted escape by the prisoners, he having been a Deputy Superintendent of Jail for about six years, the reply of respondent No.1 states that when the enquiry proceedings commenced, Shri M.S. Panchhi was the Presenting Officer and specifically (on 17.09.1993), Shri Gill was appointed as such. Yet, before that the petitioner had not made any allegation with respect to G.S.Gill being involved in the attempted escape in any manner and only started doing so when he became the Presenting Officer against the petitioner.

(18) Orders of the Enquiry Officer, passed in relation to various applications moved by the petitioner, have also been reproduced, to refute the allegations made in such applications, as also in the writ petition.

The addition of a witness, Harjit Singh Sidhu (PW5) on the request of the Presenting Officer, has also been justified in terms of Rule 8 (15) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter to be referred to as 'the Rules'). The said sub-rule is reproduced hereinunder:-

> "(15). If it shall appear necessary before the close of the case on behalf of the punishing authority. The inquiry authority may, in its discretion, allow the Presenting Officer

> to produce evidence not included in the list given to the Government employee or may itself call for new evidence or recall and re-examine any witnesses and in such case the Government employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the date of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.
>
> Note- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally."

The contention of the State, naturally, is that the addition of Shri Harjit Singh as a witness, on the application moved by the Presenting Officer on 27.05.1994, was not a gap in evidence being filled up, but only to cover the inherent lacuna in the list of witnesses earlier submitted to the Enquiry Officer.

This witness, as shown from the order of the Enquiry Officer dated 23.06.1994, was accepted to be an important witness by him, in view of the fact that he had remained Deputy Superintendent Jail at Nabha and would know of the happenings in the jail. Further, it was felt that since he was no longer an employee of the Jail Department, having been selected as an Additional Deputy Food & Supplies Controller, he would be an important witness.

Though whether or not this amounted to filling up a lacuna in the evidence and the relevance thereof, is something which we could consider further in the judgment.

Next coming to the allegation made against the co-delinquent of the petitioner, i.e. H.S. Bal, to the effect that he had tampered with the Daily Diary Journal, that was also rejected by the Enquiry Officer, holding that since Bal was also one of the accused officer of the same

incident, he would not be a party to tampering, without implicating himself.

Though, eventually, H.S.Bal was exonerated of the charges of loose administration and of giving special concessions to the prisoners (charges No.1 and 2), he was fully indicted of charge No.4, with regard to the attempted escape by the prisoners, holding that the charge was proved against him. Strangely of course, though while discussing charge No.1 and 2 against the petitioner and S.S.Thind and H.S.Bal, of loose administration and of giving special concessions to the prisoners, the Enquiry Officer exonerated H.S.Bal, however, while discussing it under charge No.6 against the petitioner (charge of frequently mixing with the prisoners and exigencies and items and taking intoxicant articles), the Enquiry Officer held H.S.Bal also guilty of loose control over the staff. Eventually, H.S.Bal, who had seemingly retired by the time that the punishment order was passed, was imposed a 10% cut in pension, whereas the petitioner and S.S.Thind were compulsorily retired.

(19) With regard to the allegation that though the enquiry was started as a joint proceeding against the three delinquents (the petitioner, H.S. Bal and S.S.Thind) but was later split up and the case of the petitioner was separated from the other two officers, the allegation has been denied in the written statement. It has been stated that each of the three officers gave their defence statements separately and the petitioners' defence statement was recorded by the Enquiry Officer on 23.08.1994.

Prior to that, on completion of the evidence on behalf of the punishing authority, the Enquiry Officer had directed the three charged officers to file their defence statements vide order dated 26.07.1994. He had directed the charged officers to file their defence statements alongwith a list of documents which they wished to rely upon, giving therein the relevance of each document to the articles of charges.

The petitioner, as per the reply of respondent No.1 (para 16 (a)), brought only a tentative statement, which the Enquiry Officer declined to accept and directed him to submit his complete statement, vide order dated 28.07.1994. The petitioner himself has annexed orders dated 18.03.1995, thereafter passed by Enquiry Officer, referring to an earlier order, directing the petitioner to file his statement of defence strictly in terms of the provisions of sub-rules 11 and 12 of Rule 8 of the Rules.

In his detailed order dated 25.03.1995, the Enquiry Officer stated

that even the defence statement submitted on 23.08.1994 was not in accordance with the aforesaid rules, as the relevance of the documents was not shown by the petitioner. He referred to the note below clause (iii) of sub-rule 11 of Rule 8 in this regard, which reads as under:-

> "Note below clause (iii)- The Government employee shall indicate the relevance of the documents required by him to be discovered or production by the Government."

Thereafter, the petitioner is stated to have filed his defence statement, which as per the aforesaid interlocutory order of the Enquiry Officer, dated 25.03.1995, states that even the said defence statement was not in compliance of the earlier order dated 18.03.1995. Hence, the Enquiry Officer reverted to the defence statement dated 23.07.1994, in order to determine the relevance of the documents sought to be relied upon by the petitioner.

The above details apart, in essence, it has been stated in the reply, in relation to the allegation of splitting up of the enquiry proceedings, is that H.S. Bal and S.S. Thind did not produce any witnesses in their defence, whereas the petitioner did. Hence, it has been denied that there was actually any splitting of evidence, but just because the defence statements were given separately by each of the charged officers, they had to be dealt with as such. It is further stated that the petitioner was given ample opportunity and had actually cross- examined the witnesses produced by the punishing authority, at length.

The reply further gives details of examination by the petitioner of H.S. Bal on 09.04.1995 and 15.04.1995, though on 15.04.1995 he was only allowed to examine him with regard to a Night Report Book, which was not brought by the Presenting Officer on 09.04.1995 and as such, the examination- in-chief itself, could not be completed qua that issue.

The petitioners' allegation is that there was a motive to split up the defence evidence, so that he could not get a chance to cross-examine the other two charged officers. However, as already noticed, the reply justifies the action of dealing with the defence statements at different stages, due to the different stands taken by the three officers, in defence statements submitted at different times and the fact that the other two charged officers did not produce any witnesses in their defence.

(20) As regards the allegation that Shri B.S. Sandhu was not allowed to be declared hostile upon appearing as a witness, the reply

states that the Enquiry Officer found nothing which could show that respondent No.2 had resiled from any statement that he had made or exhibited any kind of "hostility towards the petitioner".

The report of respondent No.2, dated 09.01.1987, has been referred to in the reply, in which the petitioner and the co-delinquents were indicted, holding that the jail break attempt was actually a cumulative result of loose administration, lack of control and policy of appeasement towards the extremists. The petitioner having accepted a farewell party from terrorists, has also been referred to.

The reply of respondent No.1, to the writ petition, in relation to the said preliminary enquiry report dated 09.01.1987, is in reference to the petitioners' allegation that he had made a request to the Enquiry Officer to summon respondent No.2 as a Court witness, so that he could cross-examine him.

All in all, the upshot of the above is that the Government did not produce respondent No.2 as a prosecution witness, the Enquiry Officer refused to produce him as a Court witness and upon the petitioner producing him as a defence witness, he was not declared to be hostile despite the petitioners' request for the same. Consequently, he could not be cross-examined by the petitioner.

Similarly, Shri S.S. Thind refused to appear as a defence witness though H.S. Bal did appear as a defence witness for the petitioner.

(21) With regard to the privilege claimed qua certain documents, by respondent No.2, the reply states that he was directed to do so on behalf of the Government and as such was authorised to do so.

We may say at this stage itself that we have perused the documents now submitted to us by Mr. G.P. Singh, learned Additional Advocate General, stated to be those in respect of which privilege was claimed. However, we refrain from making any detailed comment with regard to the same, which are largely reports on the on going problem in jails etc. The said documents, now supplied to this Court by learned Additional Advocate General, are a letter dated 05.04.1995, stating that the Presenting Officer be advised to claim privilege qua intelligence reports requested by the petitioner, which however, may be submitted in a sealed cover to the Enquiry Officer. The letter further states that S/Shri S.K.Verma, former DIG, Security and Brij Mohan, retired SP, CID, may be told not to appear as defence witnesses. The other documents given to this Court, are a letter from respondent No.2 to the petitioner, seeking his comments on the activities of extremists

confined in the jail, in the light of intelligence reports. The said letter is dated 17.09.1986, in reply to which the petitioner has also sent his comments to respondent No.2.

The other documents submitted by learned State counsel are a teleprinter message dated 18.08.1986, with regard to large scale rations being passed on to extremists lodged in two jails, including one at Nabha, expressing concern that arms and explosives may be passed on, on such pretext. Another document is a report from the office of the I.G.P., Intelligence, with regard to activities of extremists in various jails, including the District Jail, Nabha, referring to a hunger strike resorted to by two undertrials.

The affidavit of respondent No.2, dated 05.04.1995, claiming privilege in the enquiry proceedings, is in respect of the intelligence reports stated by the petitioner to have been received between 01.01.1986 to 31.12.1986, pertaining to the District Jail Nabha, including delivery of a provocative speech by alleged extremists in November 1986 and the acceptance of a farewell party by the petitioner in December 1986.

As per the affidavit, no such record as was sought, was actually written for the said period, but the reports which were available, were claimed to be privileged, from production in enquiry proceedings.

As per learned State counsel, other than what he produced before this Court now, no other intelligence report is available today, i.e. no such report, allegedly, exists as of today.

(22) An interim order dated 05.04.1995 passed by the Enquiry Officer, has also been referred to in the reply of the State in this context, which reads as under:-

> "4. In addition to above, Shri S.K. Verma, IPS and Shri Brij Mohan, DSP (Retd.) were cited as defence witnesses only to prove the existence of these intelligence reports and to question them on these intelligence reports and now since privilege is being claimed by the Government for the production of these documents in the open Court, I think recording of their statements as defence witnesses would not be necessary to the enquiry proceedings. Moreover, the said intelligence reports have been made available to the undersigned in a sealed cover for perusal during the course of enquiry proceedings".

All in all, the stand of the State, in its reply, is that respondent No.2 was very much authorized to, and correctly claimed privilege qua certain documents.

(23) Next, the petitioners' contention that his predecessor, G.S. Grewal, retired Superintendent Jail, was not compelled by the Enquiry Officer to appear as a defence witness, has been replied to by stating that G.S. Grewal had refused to appear on grounds of ill-health, even though he had been summoned. The Enquiry Officer did not consider summoning him compulsorily, in view of the fact that the petitioner did not disclose any specific reason as to why he should be so summoned.

As regards the prisoners, whom the petitioner wished to examine as defence witnesses but who did not appear, it is stated in the reply that of the six surviving prisoners who attempted to escape, five had been declared proclaimed offenders (apparently having absconded after being granted bail) and Balwinder Singh son of Hardev Singh, refused to appear, as per his affidavit dated 31.03.1995, stating that since he was facing criminal proceedings in an FIR registered under Sections 302/307 IPC etc., he did not want to state anything that may prejudice his defence in that case. Hence, the Enquiry Officer refused to summon him.

(23-A) The order of the Enquiry Officer dated 25.03.1995 relating to non- summoning of the Presenting Officer, G.S.Gill, as a witness, has also been reproduced in the reply wherein it is stated that since G.S.Gill was present on every date in his capacity as Presenting Officer, there was no need to summon him as a witness. It is not be noticed again that Shri G.S.Gill is stated to be a Deputy Superintendent of Jails, posted for a long time, at the Nabha Jail.

The aforesaid order of respondent No.3, dated 25.03.1995, also shows that he found it unnecessary to summon the then Minister of Jails, and another former Minister and a former MLA, as witnesses, on the ground that though Mr. C.L.Goyal wished to produce them to prove that they had demanded certain concessions to hardcore terrorists, no such written request was given, as admitted by Mr. Goyal. Hence, their summoning was found to be unnecessary.

(24) Coming next to the issue of the recording in the impugned order, to the effect that charge No.4 was not proved against the petitioner, it is stated in the written statement that, it was a bonafide mistake on the part of the dealing Assistant, while drafting the order and was rectified and, in any case, the enquiry report had already been

accepted by the Government earlier, wherein the charge had been shown to be mainly proved.

The allegation that the file was not put up before the Chief Minister, has also been denied, stating that the punishment of compulsorily retirement was recommended by the competent authority and was put up to the Chief Minister and approved by him, after which it was recorded by the Principal Secretary that approval had been granted. Conveyance of the approval of the Chief Minister, under signatures of Principal Secretary, is stated to be a normal practice and as such the allegation that respondent No.2 had personally taken the file to the Chief Minister, has also been denied.

(25) Going on the merits of the findings by the Enquiry Officer, it has been again stated that findings of the fact would not be gone into by this Court.

As regards whether barrack No.6 was safe more than barrack No.7, the petitioners' contention that he had submitted the application for summoning the PWD authorities, with regard to carrying out the repair works in the barracks and relevant correspondence should be summoned from the said authorities, which was denied by the Enquiry Officer; as per the reply, the Enquiry Officer had actually directed that the relevant documents be produced through a person not below the rank of a Junior Engineer, though senior officers need not be summoned simply to prove the correspondence.

In any case, the stand of the respondents is that since the charge of the building being in a dilapidated condition (charge No.3) was only partially proved against the petitioner, the said allegation is not wholly relevant.

Similarly, the charges proved against the petitioner by the Enquiry Officer, have been defended by the respondents in the reply, which need not be gone into in detail in that regard, as the findings in any case, have to be considered on their own merits by this Court.

(26) It is to be specifically noticed that in paragraph 7 of the reply on merits, the respondent State has, while of course admitting that the charge sheet dated 07.07.1992 was issued in respect of charges relating to an incident five and half years earlier, given no justification for the same. It is simply stated that the said delay did not prejudice the petitioner, in any manner.

(27) Having considered the written statement of the State

Government in detail, we now go onto the reply filed by the petitioners' superior and his immediate reporting officer, B.S. Sandhu, the Inspector General of Prisons at that point of time (respondent No.2).

This respondent has obviously denied all allegations of malafides against him, as made by the petitioner, in his writ petition. To show that he was not in any manner biased against the petitioner, he has stated, amongst other things, that in fact, it was he (respondent No.2) who was instrumental in ensuring the petitioners' promotion to the Class-1 service of jails, vide order dated 25.12.1986 and it was he who had dissuaded the petitioner from taking voluntary retirement in January 1987. He also brought the petitioner to a safe post as Principal, Jail Training School, Patiala, as the petitioner was afraid of the terrorists activities in the border district of Gurdaspur, where he was posted after Nabha. In support of the same, a DO letter written by the petitioner to respondent No.2 on 19.05.1987 (four months after the jail break), has been annexed with the reply of the 2nd respondent, a perusal of which shows that the petitioner withdrew his notice for voluntary retirement on the advice of respondent No.2, though the petitioner also expressed the wish that from "now onwards I will not be discriminated against vis-a-vis my colleagues in the matter of postings and transfers and other service considerations".

It has also been pointed out by respondent No.2 that even after the jail break incident, he had given the petitioner 'Good', 'Very Good' and 'Outstanding' reports between the years 1987-88 to 1991-92.

(28) Denying the allegation that he was in any manner responsible for initiation of disciplinary proceedings against the petitioner, the 2nd respondent has also stated, as is stated in the Governments' reply, that Mrs. Jyotsna Khanna, IAS, Secretary (Jails), who had found the petitioners' reply to the show cause notice issued to him unsatisfactory, had ordered a detailed enquiry to be held against him and other officers.

Prior to that, the reply states that after respondent No.2 submitted his fact finding report on the jail break attempt, (i.e. the report dated 09.01.1987), he had nothing to do with any disciplinary action against the petitioner and in fact, the disciplinary proceedings were eventually initiated on the basis of the report of the Sub Divisional Magistrate, Nabha, which indicted the petitioner and others for wholly loose administration, leading to an atmosphere where the prisoners conspired and had the courage to make an attempt to escape. Various other incidents of the 2nd respondent accommodating the petitioner, have

been cited in the reply.

(29) The following observations made by the Supreme Court in SLP filed by the State of Punjab, have also been quoted in the reply:-

> "Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading any such person as nominee so as to enable him to answer the charge sheet against him, the charge of malafide cannot be sustained. It is significant to notice that the respondent has not attributed any malafides to the Inspector General of Prisons, who made his report dated January 9, 1987. In this report, the Inspector General of Prisons had found the respondent responsible for the incidents, relevant portion extracted therein- before – and recommended his suspension pending inquiry."

Hence, the contention is that it is only an after-thought of the petitioner to raise allegations of malafides against respondent No.2.

Justification for his continuation as Inspector General of Prisons beyond the statutory period and his achievements etc., have also been given in the reply.

(30) The Enquiry Officer, P.S. Aujla (respondent No.3), has filed a short reply, which has already been referred to earlier, denying any relationship with respondent No.2 and his appointment as an Enquiry Officer by Mrs. Jyotsna Khanna, Secretary in the Department of Jails.

His (this respondents') wish to demit the responsibility of Enquiry Officer, upon allegations being made by the petitioner, have also been referred to and the enquiry proceedings being conducted as per procedure has been stated.

His letter to the Home Secretary, and the replies received, conveying the decision of the Government to continue him as Enquiry Officer, have been annexed with the reply.

(31) The Chairman of the Punjab Public Service Commission has filed a reply as respondent No.4, stating therein that he received the case pertaining to the petitioners' disciplinary proceedings on 18.09.1995, through a special messenger, seeking advice of the Commission in terms of Article 320 of the Constitution. It is stated that the case was processed as per prevalent procedure in the Commission and as the Supreme Court had granted 8 months' time for final disposal of the disciplinary proceedings, which were to expire on 30.09.1995,

"the case was processed expeditiously". Therefore, a special meeting of the Commission members was convened on 19.09.1995 and after going through the facts and record of the case, advice was conveyed to the Government on 20.09.1995. It has specifically been stated that before giving the advice, the findings were "carefully perused by the Commission".

The 4th respondent has denied any special interest taken in the petitioners' case and has cited Articles 315 and 320 of the Constitution to state that the Commission tendered advice in a dispassionate manner.

It has further been stated that while giving advice in the petitioners' case, it was seen that two other officers, i.e. H.S.Bal and S.S.Thind, were also found guilty and therefore, the Government had been requested to forward the cases of those two officers also. Thus, the reply further states, that there was no question of any discrimination against the petitioner on communal basis.

(32) The petitioner has filed replications to each written statement filed by the respondents.

In the replication filed in reply to the written statement filed on behalf of the respondent No.1, it has been stated that the said respondent is in no capacity to deny the allegations of malafides alleged against respondents No.2 and 3, who have filed their own replies. It has further been contended that respondent No.3, i.e. the Enquiry Officer, having filed a short affidavit, without denying any of the specific allegations made in various paragraphs of the writ petition, "he himself is liable for his own action". The denial of legal services to the petitioner, have been cited, and reference has been made to a letter written by the Deputy Secretary (Home) to the 3rd respondent, stating that just because the Presenting Officer is a law-graduate, does not mean that he is a legal practitioner and therefore, the petitioner cannot be allowed to avail of the services of a lawyer under Rule 8.8. of the Rules.

Otherwise, largely, the same contentions as have been raised in the writ petition have been reiterated in a different form in the replication.

Importantly, stress has been laid on the fact that despite the Supreme Courts' order dated 31.01.1995, that the enquiry if not completed within 8 months, would be deemed to have been dropped, the rectified order dated 29.09.1995 (with a covering letter dated 10.11.1995), amounted to contempt of the Court, especially when the

said order was passed after the petitioner had challenged the original order dated 29.09.1995 and notice had been accepted in Court on 01.11.1995 itself, including notice regarding staying the operation of the order.

Reference to CROCP No.32 of 1995 (the contempt petition that is to be heard along with this petition) has also been made, in which notice was issued by this Court to Shri Gurpal Singh, i.e. the Deputy Secretary (Home and Justice) who had also filed the reply on behalf of the State (in this petition).

(33) In the replication filed to the reply of the 2nd respondent, the petitioner has made serious allegations of communal bias against the said respondent, citing the instances of non-Sikh or Sikh scheduled castes officers, who were discriminated against, to benefit "undeserving jat Sikh officers". An earlier instance of imposing a punishment of stoppage of two increments, at the instance of the 2nd respondent, has also been cited, though that action was withdrawn, when it was challenged in a Civil Court.

Thereafter, the allegations of malafides against respondent No.2 have been reiterated, also making allegations against Gurpal Singh, who filed the written statement on behalf of the respondent No.1, alleging that it was done in connivance with respondent No.2.

A letter of one Jhanda Singh Sandhu, accompanied with his affidavit dated 01.02.1995, has also been annexed, in which it has been stated that he was pressurised by respondent No.2 to write a false and frivolous complaint against one S.C. Oberoi, Superintendent, District Jail, Hoshiarpur.

(34) The replication to the reply of the Enquiry Officer (respondent No.3) again states that the said respondent not having replied to each paragraph of the writ petition, wherein specific allegations have been made against him, the specific allegations are deemed to be admitted and denial thereto, either by respondents No.1 or 2, have to be treated as replies that are non-est.

It, of course, needs to be noticed that nothing specifically has been said by the petitioner with regard to the denial of the 3rd respondent of any kind of personal relationship with respondent No.2 (in the manner that the petitioner has alleged in the writ petition, by marriage of some common relatives to each other).

(35) The replication filed to the short reply filed by the Chairman

of the Public Service Commission (respondent No.4), again alleges that no para-wise reply having been filed to the contents of the writ petition, proves the fact that the Commission did not examine the merits of the case at the time when its advice was sought by the Government.

Factually, it is seen that the reply of the Commission is specifically in answer to paragraphs 23 and 28 (i & j) of the writ petition, because of the specific allegations against the actions/acts of omission, of the Commission, made by the petitioner, in those paragraphs of the writ petition. After making preliminary submissions in the replication, the contents of paragraphs 23 and 28 (i & j) of the written statement have also been controverted by the petitioner.

It has been stated that the 4th respondent has not denied that respondent No.2 actually visited the Commission on 18.09.1995 and met the Chairman, "to prejudice him about the case". The petitioner has further alleged that, in fact, the Chairman of the Commission only acted as a "rubber stamp" in the case, by appending the Commissions' stamp and his signature, to what was allegedly dictated by the other respondents. Therefore, effectively, the petitioner has alleged that the Commission, which is an independent authority (actually a Constitutional authority) has not independently applied its mind to the case of the disciplinary proceedings against the petitioner.

It has also been alleged that the very fact that the Commission had to separately ask for the cases of disciplinary proceedings against H.S.Bal and S.S. Thind, shows that the entire disciplinary proceedings were split up with a biased mind.

To show that the Commission was not actually being considered even as a necessary authority and that it was, in fact, only a formality to ask for approval of the Commission, the petitioner has cited what he had stated in another writ petition filed by him, with regard to the promotion of one Amrik Singh as a Deputy Inspector General of Prisons. It has been alleged that despite the fact that the 1st respondent in that case had specifically stated that such promotion would be subject to the fact that Amrik Singhs' appointment as Superintendent was approved by the Commission, without any such approval having been received for Amrik Singhs' promotion, even to a lower rank, he was still promoted by the Government, to a higher rank.

(36) With the above, essential averments contained in the pleadings on all sides, having been culled out by us, from the paper book, we turn our attention to the enquiry proceedings, in order to

determine, the substance of the truth or falsehood of the charges against the petitioner, and his allegations and the grounds taken by him to seek a writ of certiorari, quashing the disciplinary proceedings entirety.

To our mind, procedural irregularities would essentially pale into insignificance, if the substance of the charges is actually found to be correct, where, to repeat, the charges are of such a serious nature.

(37) While detailing the contents of the petition, we have gone into the details of various irregularities pointed out by the petitioner, in view of the fact that though eventually what has to be weighed is the evidence of the witnesses with regard to the charges against and in favour of the petitioner, and the Enquiry Officers' appreciation of the evidence, before reaching his conclusion, yet the aforesaid references were necessary, as the petitioner, during the course of arguments had, obviously, referred to them. Thus, as regards the procedure adopted, though it is obvious that there were some witnesses etc., S/Shri S.K.Verma, former DIG, Security and Brij Mohan, retired SP, CID, whom the petitioner wished to examine but were not allowed to be examined; but certain witnesses refused to appear for him and were also not compelled to appear, by respondent No.3. However, what is eventually to be considered, is the merits of the finding of the Enquiry Officer, on the basis of statements of the witnesses who did appear and testified against the petitioner, and those who appeared as his defence witnesses.

In our opinion, if the charges of loose administration and allowing hardcore prisoners to stay in the same barrack, which was allegedly a less secure barrack than barrack No.6, are charges which stand proved against the petitioner, then the procedural lacunas, as long as they do not wholly prejudice the petitioner with regard to the above findings, are not to be made the basis of exoneration of the petitioner, when the charges against him and his co- delinquents are, to repeat, of such a serious nature.

We, however, are not going to finally appraise the findings of the Enquiry Officer, as per settled law that such findings would not be ordinarily gone into by a writ Court, unless they are shown to be wholly perverse. Actually, a writ Court is only to see as to whether proper procedure was followed in disciplinary proceedings initiated against a charged employee and thereafter not go into the findings of fact. However, in this case, disciplinary proceedings having been initiated almost 24 years ago, i.e. in 1992 and having culminating in the impugned order passed on 29.09.1995, i.e. again more than 20 years

ago, at this stage for us to simply allow or dismiss the writ petition on procedural irregularities, when the charges against the petitioner, to again repeat, are that due to his alleged laxities and favours, a jail break attempt was made by alleged terrorists, would be a miscarriage of justice. This is especially so, in our opinion, in view of the fact that with this Court earlier having quashed the disciplinary proceedings, they were specifically ordered to be continued by the Supreme Court, in view of the seriousness of the charges. Therefore, we would consider them and then consider the proper action to be taken.

(38) Thus, as regards the proceedings, first, even though certain witnesses like S/Shri S.K.Verma, former DIG Security and Brij Mohan, retired SP CID, plus two ministers and an MLA that the petitioner wished to examine, were not allowed, either by the Government or by the Enquiry Officer, to appear, the significance of those witnesses would only be with regard to the circumstances prevailing at that time, due to which the petitioner may be under pressure to allow certain laxity in the administration. However, whether such pressures can be used as an excuse to allow such laxity to an extent that eight hardcore prisoners attempt an escape from the jail, resulting in the death of a Warden and one of the prisoners themselves, is also to be considered by this Court. But that would be held against the petitioner, only if the evidence points against him in that regard.

Therefore, in our opinion, what is required to be considered, at this belated stage, is as to whether the evidence against the petitioner, with regard to the charges of loose administration, including giving too much leeway and freedom to hardcore prisoners, thereby facilitating their conspiring with each other to attempt an escape, points to his guilty or not.

(39) It is seen that the charges of loose administration and of giving special concessions to prisoners (charges No.1 and 2) have been held to be proved by the 3rd respondent, essentially on the statements of five witnesses and in the light of the rules pertaining to the duties of a jail Superintendent.

Though, as said, normally we would not go into the details of the depositions of various witnesses that appeared disciplinary proceedings before the Enquiry Officer, we are doing so in view of the fact that Mr. Goyal, i.e. the petitioner who has argued in this petition in person, submitted among other things, that even a perusal of the evidence that was led before the Enquiry Officer, would show that the petitioner was not guilty of the charges and a deliberate mis-reading of the evidence,

on account of the bias against him by respondents No.2 and 3, resulted in him having been held guilty, in the manner that the Enquiry Officer did so. Hence, we feel it necessary to examine the depositions of the witnesses who appeared on both sides, to try and determine as to whether the findings on the basis of such evidence, and the documentary evidence before the Enquiry Officer, were perverse, or as to whether they are sustainable.

Of course, if the irregularities are such as wholly prejudice the charged employee, obviously then the proceedings themselves have to be held to be vitiated. However, in the present case, at this stage, we are more concerned with the sustainability of the findings, on merits.

We therefore, go on to consider the grounds on which the petitioner alleges that the enquiry proceedings stand vitiated.

(40) The first, of course, is the issue of malafides on the part of respondent No.2 and, in alleged connivance with him, of respondent No.3, i.e. the Head of the Department-cum-immediate superior of the petitioner, and the Enquiry Officer, respectively.

The petitioner has alleged a two fold ground of bias at the hands of respondent No.2, first, because the petitioner was the next eligible person to be promoted as I.G. Prisons, after the retirement of M.L. Sandhu, who could have challenged the continuation of respondent No.2 as I.G. beyond the stipulated period of five years. We are not going into the rule which mandates a maximum tenure of 5 years, as it is not disputed by any of the respondents, though they have stated that it is the discretion of the Government to continue any officer, in administrative interest.

The other ground of bias, attributed by the petitioner to respondent No.2, is on communal lines, to the effect that the latter was favourable towards jat Sikh officers and biased against all others.

(41) Taking the 1st allegation, it needs to be noticed that it has not been denied by the petitioner in any of the replications filed by him, that the competent authority to initiate disciplinary proceedings against him was not respondent No.2 but the 1st respondent (i.e. the Principal Secretary to the Government of Punjab, Department of Home Affairs and Justice). It is further not denied that the decision to initiate disciplinary proceedings was taken by one Mrs. Madhu Khanna, Secretary Home, who found that the petitioners' reply to the show cause notice was unsatisfactory. Being a Class-1 officer, as per rules of business of the Government, the matter went up to the Chief Minister

and, though the petitioner has challenged the fact that any actual approval was even obtained from the Chief Minister, the fact is that the approval of the Chief Minister is admitted to be recorded on the file, by the Principal Secretary to the Chief Minister.

The allegation that the entire process was initiated at the instance of respondent No.2, therefore, stands negated in view of this factual position, that the decision to initiate disciplinary proceedings against the petitioner was not that of respondent No.2 but of the Government, i.e. first respondent No.1 and thereafter, as per rules of business, the Chief Minister. Even presuming that the preliminary initiation, to actually issue a notice to the petitioner and thereafter a charge sheet etc., after five and half years of the incident of the attempted jail break, was at the instance of respondent No.2, (though that is an unsubstantiated allegation) factually, it was completely out of the hands of respondent No.2.

(42) We must, however, record here that most definitely we find it strange that the disciplinary proceedings were initiated in July 1992, i.e. more than five and half years after the occurrence of the attempted jail break on the night of January 1/2, 1987. But there is nothing on file to suggest that these delayed proceedings were at the behest of respondent No.2, in view of what has already been noticed above, as that the decision was actually taken by the Secretary, Home, of the respondent Government.

Yet, even while finding it strange that the proceedings as should have been correctly initiated soon after the preliminary enquiry report was received, the fact is that this ground of challenge is no longer available to the petitioner, in view of the fact that, keeping in view the seriousness of the charges, of an attempted jail break by hardcore prisoners, leading to the death of one Warden and two prisoners, the hon'ble Supreme Court had directed that the enquiry should continue, though must be concluded within a reasonable period, i.e. within 8 months of the order of the Apex Court, dated 31.01.1995. Hence, the Supreme Court having already considered the delay and having ordered continuation of a time bound enquiry, it is neither open to the petitioner, nor to this Court, to go into that issue at all.

(43) Coming back to the allegation of the petitioner of communal bias at the hands of respondent No.2, the next aspect which is to be seen, is that, factually, not just the petitioner but also two officers of the community in those favour respondent No.2 is stated to hold a bias, were also charge sheeted and one of them, (S.S.Thind), has been

imposed an identical punishment of compulsory retirement. The other, H.S.Bal, seemingly having retired by the time the punishment was imposed upon him, was imposed a punishment of 10% cut in pension. Since the quantum of punishment imposed on Bal is not an issue before us, we, obviously, say nothing further on that matter.

(44) However, it is still to be considered by this Court whether there may have possibly been some kind of bias at the hands of respondent No.2, despite the fact that the disciplinary proceedings were not ordered by him, nor was he the punishing authority who eventually imposed the punishment upon the petitioner.

Even presuming that there may have been personal or professional rivalry existing in the mind of respondent No.2 against the petitioner, the fact is that, to yet again repeat, disciplinary proceedings were not ordered by respondent No.2 but by the Government itself, and no allegation of mala fides has been made against any other officer, including the Home Secretary. As such these proceedings cannot be held to be vitiated on the ground of mala fides at the hands of respondent No.2.

No doubt, respondent No.2 is stated to have given a fact finding enquiry on 09.01.1987 in which he indicted the petitioner. We would therefore, have to consider the issue of whether this alone was made the basis of the finding of the Enquiry Officer, against the petitioner and other co-delinquents, or whether such finding was on the basis of independent evidence led before him. That we shall see, while referring to the evidence of witnesses.

(45) As regards non-examination of the issue by the Punjab Public Service Commission, we do not find much substance in the said allegation because the file was not returned the same day, as alleged by the petitioner, but was kept by the Commission for one complete day after it had been handed over and was sent back to the Government on the 3rd day after it had been handed over. The fact that the Commission was made aware, by respondent No.2 himself, of the urgency to deal with the file, in view of the order of the Supreme Court to complete the proceedings in a time bound manner, obviously would have impressed upon the Commission, the need to deal with the file with utmost urgency. Hence, that allegation of the petitioner, against respondent No.4 in particular and the Commission in general, is rejected.

(46) Coming then to the choice of respondent No.3 as Enquiry Officer and his alleged connivance with respondent No.2, to eventually

indict the petitioner.

As already noticed, the petitioner has not refuted in his replication, the denial of respondent No.3 with regard to any relationship between him and respondent No.2. The allegation that respondents No.2 and 3 went together in a car to the jail premises, from Chandigarh, is no reason for us to attribute connivance between the two, when obviously, as Head of the Department, respondent No.2 would need to inspect the jail, and respondent No.3, being the Enquiry Officer, may have accompanied him to get first hand knowledge on the exact plan of construction of barracks etc. in the jail premises. Hence, simply for that reason, we find no ground to hold that the enquiry proceedings are vitiated.

(47) The petitioners' next allegation is that he was not allowed to produce the witnesses that he wished to produce in his defence, and the witnesses that he wished to cross-examine, he was not allowed to so do.

The first of these allegations is that, respondent No.2 should have been brought either as a prosecution witness or, if not, then he could have been summoned as a witness by the Enquiry Officer. Both these requests were denied and, eventually, the petitioner had to produce respondent No.2 as a defence witness, so as to be able to obtain his deposition on the issue, he having first held the fact finding enquiry on the incident, and also being the Head of the Department.

Strangely, in the file submitted to this Court, containing the statements of the witnesses (PWs, DWs and CWs), the deposition of respondent No.2, as DW6 is missing. The pages have obviously been removed, which we did not notice at the time when the record was submitted to us, but have now seen. After page No.67, on which the cross-examination of DW5, H.S.Bal, concludes, is page No.72, containing the deposition of DW7, Kamal Jain. The deposition of DW6, B.S.Sandhu, (respondent No.2) is thus missing from the enquiry file submitted to this Court. Obviously, four pages of the file have been removed, for which the respondent Government needs to be severely reprimanded.

As seen from the final enquiry report, it is not in doubt that respondent No.2, even as DW6, did not depose in favour of the petitioner. As contained in para 13 of the said report, DW6 deposed that in his preliminary enquiry report dated 09.01.1987, he had concluded that the incident was the cumulative result of loose administration, indiscipline and laxity in control over the prisoners, by

the petitioner, who followed a policy of appeasement towards the extremists.

In the reply filed by respondent No.3 (Enquiry Officer), no specific stand has been taken by him on this issue. However, in the reply of the State, the action of the Enquiry Officer has been defended on the ground that since he found nothing which could show that respondent No.2 had resiled from any statement, or had exhibited any kind of hostility towards the petitioner, he could not have been declared to be hostile.

As regards this particular aspect of the enquiry, we find the petitioners' contention wholly justified, inasmuch as, no opportunity for cross- examining B.S. Sandhu was given to him, even after he requested that, in view of Sandhus' testimony, he be declared hostile to the petitioner.

Therefore, to that extent, we hold that the Enquiry Officer mis-conducted himself in refusing a genuine request of the petitioner.

(48) We now look at the next issue raised by the petitioner, with regard to splitting up of the enquiry proceedings.

The stand of the respondents is that the enquiry proceedings were initiated as common proceedings against the petitioner, H.S.Bal and S.S. Thind. However, in view of the different defence statements given by them, at different points of time, the petitioner alleges that the enquiry was actually split up. The respondents have stated that since the other two officers charged did not examine any defence witnesses, hence, the allegation of the petitioner that the enquiry was split up for any oblique motive, is a wholly mis-placed allegation, especially in view of the fact that the petitioner had requested for both H.S. Bal and S.S. Thind to appear as his witnesses and H.S. Bal actually appeared for the petitioner. A perusal of the enquiry proceedings shows that there was no request by the petitioner that he be declared hostile on account of any statement made by him and as such, the allegation of the petitioner that he could not cross- examine him, is obviously without foundation in this particular case.

As regards S.S. Thind, he declined to appear in favour of the petitioner, on the ground that any deposition that he makes, may harm his own defence.

On this issue, pertaining to common proceedings taken against more than one charge sheeted employee, the petitioner has also referred

to Rule 12 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

The petitioner has also referred to the fact that before the Supreme Court, in the earlier round of litigation, the Government had admitted that the proceedings were continuing separately. The respondents neither denied nor affirmed the aforesaid contention.

Further, the petitioner has referred to the fact that the Commission asked for the proceedings against H.S. Bal and S.S. Thind so as to tender advice on the same, in view of the fact that they were charge sheeted together, but the case of the petitioner was sent for approval of the Commission, separately.

To that extent, therefore, it has to be said that though common proceedings were initiated, eventually at least, at the point of taking a decision against the officers, they were split up in view of the fact that the defence statements were given at different points of time, and even before the Enquiry Officer, they were not entirely held as common proceedings, though the witnesses examined deposed with regard to all the officers involved. We say this because nothing to the contrary, with regard to re-examination of witnesses qua other charged officers, has been brought to the notice of this Court.

It is also a fact that in the case of the petitioner, the disciplinary proceedings were to be concluded within 8 months of the order of the Supreme Court and as such, his case was obviously expedited by sending it separately to the Commission for its advice.

(49) Coming to Rule 12 of the Punishment & Appeal Rules, 1970, it stipulates as follows:-

> **"12. Common Proceeding:-**1) Where two or more Government employees are concerned in any case the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government employees may make an order directing that disciplinary action against all of them may be taken in a common proceeding.
>
> Note- If the authorities competent to impose the penalty of dismissal on such Government employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

a. Any order under sub-rule (1) shall specify-

i. the authority which may function as the punishing authority for the purpose of such common proceeding.

ii. the penalties specified in rule 5 which such punishing authority shall be competent to impose;

iii. whether the procedure laid dawn in rule 8 and rule 9 or rule 10 shall be followed in the proceedings."

A perusal of the Rule shows that the choice of taking disciplinary action by common proceedings, would be with the competent authority. Even if, presuming, that the proceedings against the petitioner and his two co- delinquents started off as common proceedings but had to be bifurcated subsequently, due to the reasons given above, as taken from the reply of the respondents, that the different statements were given by the three charged officers at different times, no prejudice had been caused to the petitioner at least by any bifurcation, as he was given opportunity to cross-examine the witnesses, except of course, B.S. Sandhu. Hence, we find no merit in this contention raised by the petitioner.

Further, keeping in view the fact that the co-charged employes did not produce any defence witness and as such, there was no cross-examination needed by the petitioner, other than, possibly, of H.S. Bal, whom he did not ask to be declared hostile, we find no reason to hold the proceedings vitiated on that count, only because the final decision in the case of the three charged officers was taken separately.

This would be more so, because the other officers were also punished, with one of them being imposed an identical punishment. Hence, we find no reason to agree with the petitioners' contention on this issue.

(50) Coming next to the allegation that the petitioner was not allowed to produce documents that he had summoned from the Government, claimed to be privileged because they were documents pertaining to the prevalent situation in the State at the time, including the situation in the jails.

It was held by the Enquiry Officer, that no benefit could be drawn by either the Presenting Officer or the delinquent officers, with regard to the charges against them, from those documents. Hence, they were not considered to be of any "paramount importance" by respondent No.3.

In the writ petition, the petitioner has also referred to Annexure P-4 annexed with it, which is a letter from him addressed to the Enquiry Officer, alongwith which is annexed Annexure 'B', seeking the intelligence reports pertaining to the Nabha Jail between 18.06.1986 to 31.12.1986, particularly with regard to the delivery of a provocative speech by Gurdev Singh Kaunke, as also intelligence reports in respect of such other jails.

Learned State counsel, as already noticed earlier, produced a file before us, in which, other than the notings and letters pertaining to claiming of privilege with regard to the intelligence reports summoned, there is a copy of a tele-printer message dated 10.08.1986, from the IGP, Punjab Armed Police, to the SSP, Patiala, with regard to tins of Ghee, milk and fruits being passed on to the extremists lodged in Nabha and Sangrur jails and the possibility of some arms and explosives being passed on alongwith. A direction was issued by the IGP, that the matter be taken up with the Jail Superintendents immediately, and to advise them to ensure that such an eventuality is avoided. Accordingly, a letter from respondent No.2 was addressed to the petitioner, to ensure that no such incident occurred.

Other than that, there is a report of the IGP, Intelligence, addressed to various authorities across the State, referring to incidents, including one at Nabha, of a hunger strike by some inmates, and demoralisation amongst jail authorities, coupled with a tendency to ignore indiscipline by extremists. Certain measures, including visits of senior police officers to the jail, was advised.

Thereafter, a letter from the petitioner to the IG Prisons, is seen in the file, stating therein that four undertrials had not taken their meals on a particular day and further stating that there was no question of demoralisation amongst jail authorities of the Nabha Jail. Still further, it states however, that morale of the forces depends upon the resources available, and that the request for a police wireless set not having been met, alongwith the other request of posting of police pilots near the jail for screening the visitors and other undesirable elements.

In our opinion, though the intelligence report on Kaunkes' speech may have had some bearing on the case of the petitioner, the other reports were of a general nature. The fact is that these reports were taken to be privileged reports, and in the prevailing situation in the State at that time, we cannot say that the Government took an unreasonable stand with regard thereto.

Be that as it may, from the reports that were put before us, eventually, in our opinion, it did not cause any prejudice to the petitioner, that these reports were not allowed to be exhibited.

The petitioner contended that had he been allowed to refer to those documents, he would have been able to show that there was an atmosphere of fear and demoralization, across the State and as such the situation in Nabha Jail was no different. However, we do not see how showing the prevalent condition in the State and equating them with the Nabha jail, would help the petitioner to establish that a seriously attempted jail break, can be washed away and absolve those responsible of ensuring prevention of such an incident, i.e. of the responsibility cast upon them.

Even today no document has been produced to show that the situation in the Nabha Jail was uncontrollable or even terrible, compared to other jails, at the time when the petitioner was appointed as Superintendent thereof, in June 1986. Thus, we do not see what mileage could have been derived by the petitioner had the intelligence reports been allowed to be exhibited in the enquiry proceedings, as eventually, the responsibility of ensuring that such serious incidents do not take place, fall upon those at the helm of administration during the period immediately leading upto and during the occurrence of such incidence.

(51) As regards the allegation that respondent No.2 was not the competent authority to claim privilege and it was in fact the Government which could do so, the reply of the Government, as also a perusal of the file itself, shows that the decision to claim the said documents as privileged documents, was taken at the level of Government, though it is definitely not clear from the file as to whether it was taken at the level of Deputy Secretary only, who has signed the communication addressed to the IG Prisons in this regard, or whether he had actually put up the matter to his superiors for taking such a decision. It also needs to be noticed that as per Section 123 of the Indian Evidence Act, 1872, it is the Head of the Department concerned who is to take a decision as to whether an unpublished document is to be claimed privilege in respect of, or not. In the present case, the needful having been done by somebody in Government itself, we do not find any force in the petitioners' contention, further because in any case, respondent No.2 himself was also competent to do so.

(52) It has next been alleged by the petitioner, that the fact finding report submitted by respondent No.2, dated 09.01.1987, was

brought on record by the Enquiry Officer, on the basis of a statement made by respondent No.2 while appearing as a defence witness for the petitioner. As such, a gap was filled in by respondent No.3, because the enquiry report was not originally a part of the documents relied upon by the Presenting Officer.

The petitioner, as already discussed, was not allowed to cross-examine respondent No.2, as respondent No.3 refused to declare him to be hostile, which we have already deprecated. Hence, we are inclined to accept the petitioners' contention in this regard.

(53) The next contention, is with regard to non-summoning of the petitioners' immediate predecessor as Superintendent Jail, as a witness, though the petitioner had sought to bring him on record as a defence witness.

As a matter of fact, the said officer (Shri G.S.Grewal) had stated, as admitted by the petitioner, that he did not wish to depose as a defence witness, because he was not posted at Nabha jail at the relevant time, but in fact, before the petitioner, i.e. about six months prior to the incident and therefore, he claimed he did not know anything about the incident.

The Enquiry Officer did not compel his appearance, holding that it was not material to the case of the petitioner.

We are not in entire agreement with respondent No.3s' decision in this regard; however, it is obvious that the value of Grewals' deposition again would have been with regard to the prevailing condition at the time when the petitioner took charge of the Jail. Thus, obviously any laxity by Grewal himself, as could have been brought out by the petitioner while examining/cross- examining him, was not allowed to be done by respondent No.3. Whether this was in order to shield respondent No.2 or otherwise, we cannot say, but even presuming (without any further comment in the absence of any material in that regard), for the sake of argument, that the petitioner would have brought out any laxity on the part of his predecessor, with regard to indiscipline in the jail, that still would not absolve the petitioners' own performance in enforcing indiscipline, if it is concluded that there was such laxity, on the basis of the evidence that was actually presented in the proceedings.

(53-A) The petitioners' next grievance, that one of the prisoners who attempted to escape, Balwinder Singh, was also not brought as a witness despite his wish to examine him, is not an argument which we

can accept, in view of the fact that Balwinder Singh himself refused to appear, on the ground that since he was facing a criminal trial, anything that he said in the enquiry proceedings may eventually go against him in the trial. Therefore, we find no substance in this averment and argument.

(54) The next grievance of the petitioner, however, is one which merits acceptance in our opinion, that the Presenting Officer, G.S.Gill, who was the Deputy Superintendent of the jail for about five years, including for most of the six months that the petitioner was the Superintendent of Jail, and also was a custodian of the record for that period, was not brought as a witness for the Department but was made the Presenting Officer, thereby virtually absolving him of any kind of responsibility for the jail break and at the same time, denying the petitioner any chance of cross-examining him with regard to the conditions prevalent in the jail during the petitioners' own tenure, as also prior to that.

In our opinion, making such an officer as the Presenting Officer did prejudice the petitioner, inasmuch as, his right to examine/cross-examine him was taken away, to try and show that he had inherited a bad situation from his predecessor.

However, again, even while indicting the Government for possibly trying to favour a particular officer by making him a Presenting Officer to substitute an already appointed Presenting Officer, the petitioner, if the evidence otherwise points to his loose administration, cannot be said to be wholly prejudiced, to the extent of his own performance during the six months leading upto the attempted jail break. Whether or not the petitioner can be held responsible for the same on the basis of evidence pointing against him or in his favour, is something that will be need to be considered.

(55) It is, thus, on the basis of the aforesaid averments in the petition, that is has been alleged that respondent No.3, as an Enquiry Officer, was biased against the petitioner and, in fact, the complete enquiry proceedings were tilted against him.

Having considered the arguments, we are not entirely in disagreement with what the petitioner has submitted, for two reasons. Firstly, non-declaration of respondent No.2 as a hostile witness to the petitioner, upon him not supporting the case of the petitioner disabled the petitioner from cross- examining him, thus leading to some possible evidence that may have been elicited from him. Secondly, the

appointment of a Presenting Officer who should not have been so appointed. Of course, the 2nd is not something which was in the hands of the 3rd respondent, but we find that it was indeed an act on behalf of the respondent State that could have been avoided and which would have enabled the petitioner to summon him as a witness, even if the department did not, and to cross-examine him.

(56) The question then is that, when there was at least some degree of unfairness on the part of respondent No.3 as an Enquiry Officer, and on the part of the State/competent authority, would that vitiate the enquiry proceedings entirely, or whether the charges against the petitioner are sustainable, on the basis of the evidence of witnesses who appeared in the enquiry proceedings.

Though, in normal circumstances, for these reasons we may have been inclined to remit the matter with a direction to initiate fresh proceedings, we are obviously not inclined to do so, about 20 years after the disciplinary proceedings were concluded and about 29 years after the incident of the attempted jail break itself took place, as already said.

Further, we are not inclined to hold the entire proceedings to be vitiated at this stage, on account of the aforesaid two reasons, in view of the seriousness of the charges and the fact that hardcore prisoners did attempt a jail break immediately after the petitioner demitted charge, as already stated earlier in this judgment, which resulted in the death of a Jail Warden, other than one of those prisoners. Thus, in the peculiar circumstances of this case, we need to look at the testimonies of the witnesses that appeared on both sides, to see whether the charges against the petitioner, or any of them, is sustainable, so as to justify the punishment imposed upon him, of compulsory retirement.

(57) We, therefore, proceed to look at the testimonies of the witnesses as appeared against him.

Before we do that, we may still quote from a judgment of the Apex Court, reiterating the law that a writ court should not go into the evidence led in disciplinary proceedings. It was held in ***State of A.P.*** *versus* ***S.Sree Rama Rao***[2] as follows:-

> "………it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High

[2] (AIR 1963 SC 1723)

> Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

Thus, it has been held that if there is violation of the rules of natural justice or the departmental proceedings were held contrary to rules, or a fair decision was not taken, either due to some extraneous consideration or that the conclusion reached by the competent authority is, on the face of it, wholly arbitrary and capricious, then a writ Court would interfere to set aside either entire set of proceedings or the decision of punishment/exoneration.

In the present case, as already stated by us more than once, firstly, the Enquiry Officer denied the petitioner the opportunity to cross-examine respondent No.2, and the Government itself appointed a Presenting Officer who, in our opinion, (in agreement with the petitioners' contention), should have been actually been a witness, vitiates a part of the enquiry proceedings, even though we have not agreed with the petitioner on other aspects, and with regard to other irregularities alleged by him.

Secondly, the punishing authority itself having erred in not fully applying its mind while passing the punishment order, inasmuch as, contrary to what was held by the Enquiry Officer, charge No.4 was shown to be not proved against the petitioner, in the original order of punishment, and thereafter shown as mainly proved. However, as we have already declined to set aside the entire proceedings, for the reason we have given, we are now required to go into the substance of the

allegations against the petitioner, as we cannot at this stage remit the matter to the Government for a fresh enquiry, though we may do so for a fresh decision, if need be.

Hence, we now turn our attention to the deposition of the witnesses who appeared before the Enquiry Officer, reading it alongwith parts of the enquiry report.

(58) A perusal of the enquiry report shows that one Surinder Kaushal, Assistant Superintendent, appeared as PW1 and stated that the laxity in the work of statutory searches and supervision of the prisoners crept in after the petitioner allowed hardcore terrorists to celebrate the 'Gurpurab' (birth anniversary celebrations) of Shri Guru Nanak Dev Ji, by allowing them to hold an 'Akhand Paath' (three days continuous recital of the Guru Granth Sahib) in barrack No.3, despite the fact that on all previous such occasions the 'Akhand Paaths' were performed in the Gurdwara situated within the jail premises. For recital of the 'Guru Granth Sahib', services of notorious elements confined in the jail were allowed, whereas in the past, only old prisoners were allowed to perform these duties. A reading of the testimony itself, from the record produced by the respondent State, shows that PW1 further testified that Balwinder Singh, one of the prisoners who attempted the escape, also acted as a 'Granthi' on the occasion. The enquiry report itself further reads to say that fifteen prisoners were shifted to barrack No.3 to act as 'Granthis' (to recite from the 'Granth Sahib').

This witness further testified that the petitioner also allowed the prisoners to put curtains on the windows of the jail, which resulted in complete invisibility of the barracks from outside.

As per PW1, the petitioner was due for promotion and he did not want to take any harsh measures against terrorists in the jail. The petitioner is also stated to have allowed the prisoners to bring quilts from their homes, despite resistance from the Assistant Superintendents. Mandatory work relating to searches of prisoners and barracks, also came to a stand still.

In his cross-examination, PW1, Surinder Kaushal, admitted that with regard to duties regarding search of prisoners and barracks, they were giving fake certificates under the orders of the petitioner, as he had directed that “jail rules and regulations were not to be enforced”.

The witness also admitted that during searches after the attempted escape, some articles like small thin ropes and small dandas (sticks) were recovered. He also admitted that they (Assistant Superintendents)

were told by the co-delinquent, Surinder Singh Thind, Deputy Superintendent, that they were to over look the breach of rules and regulations by the prisoners, as per the orders of the petitioner.

Though not specifically brought out in the enquiry report, a perusal of the testimony and cross-examination of PW1 shows that he also stated that the safest and more secure place in the jail was barrack No.6 which contained 20 cells, plus four cells separate from those 20. He also testified that one of the demands of the prisoners, at the time of the 'Bhog' ceremony (in connection with the 'Gurpurab'), was that four notorious persons be shifted from barrack No.6 to barrack No.7, whom he named as Balwinder Singh, Major Singh, Khazan Singh and Swinder Singh. In barrack No.6 these prisoners had been put in separate cells, whereas in barrack No.7 they were kept in one cell. Subsequently, some more dangerous prisoners, i.e. Ram Singh, Major Singh and other prisoners, were sent directly to barrack No.7 (however, it is not clarified in the testimony as to whether those three were sent during the petitioners' tenure or were sent to said barrack on 28.12.1986, under the orders of a co-delinquent (and the petitioners' successor), H.S. Bal.

PW1 also stated (in cross-examination) that there were no curtains in barrack No.7. However, he had got curtains from barracks No.1 and 4 removed, after the petitioner demitted charge.

The Assistant Superintendent also testified (in his examination-in-chief) that though hardcore terrorists had been lodged in Nabha jail right since Operation Blue Star (in 1984), before they were shifted to the Jodhpur Jail, however, no attempt had previously been made by any terrorist to escape.

As per the testimony of this witness, one Mr. Lal, who was Incharge of the BSF security personnel deployed on the outer wall and towers of the jail, had brought to the notice of the petitioner, in the witnesses' presence, that a number of the prisoners in barrack No.7 used to jump the enclosure wall of the barrack and by doing so they could touch the top of the enclosure wall, sometimes even trying to reach the top of the enclosure wall by climbing on the shoulders of each other. The BSF Incharge had also, as per PW1, told the petitioner that they should be immediately stopped from doing so, or they could be shot by the BSF personnel. However, allegedly, the petitioner took no effective steps to stop such activities.

It is also seen, that during cross-examination, this witness also

deposed that he was placed under suspension at the instance of the petitioner. According to the witness, he was suspended on account of proceedings held against him under Rule 10 of the Punishment & Appeals Rules because he was related to the President of the Hindu Suraksha Samiti, who had abused the petitioner. Eventually, this witness, in those proceedings against him, was awarded the punishment of censure, as deposed by him.

(59) It also needs to be considered that this witness apparently had reason to be upset with the petitioner, in view of the fact that he had admitted that he was suspended from service and faced disciplinary proceedings at the instance of the petitioner.

The witness, who was a 'senior enough' officer, working as an Assistant Superintendent in the jail at the relevant time, has deposed that there was loose administration by the petitioner, giving too many concessions to the hardcore elements in the jail, thereby allowing them to conspire with each other and generally boosting their morale.

(60) The report of respondent No.3 next refers to the testimony of Balkar Singh, PW2, who was also an Assistant Superintendent in the jail, from 13.11.1986 to 18.05.1987. As per this witness, though on joining on 13.11.1986, he alongwith one Balbir Singh, PW3, had found no curtains/turbans etc. hanging on the windows of the barracks, the said curtains came up after the celebration of 'Gurpurab', which was allowed to be celebrated in barrack No.3, as per the request of the prisoners. This witness further testified that on the request of hardcore prisoners, one Bhai Gurdev Singh Kaunke, who was being kept separately in the jail itself for security reasons, was allowed to join the 'Bhog' ceremony and perform the 'Ardas'. These prisoners and one Balwinder Singh Loham, as per this witness, secured a number of relaxations from the petitioner, contrary to the rules.

Further, he testified that the said Gurdev Singh started coming to the 'Gurdwara' daily, where he started summoning other terrorists, in the “garb of a recitation of Gurbani”, and also threatened the jail staff who came near the 'Gurdwara'.

This witness again, like PW1, testified that the prisoners were allowed to bring their private beddings from outside, under the supervision of the petitioner himself. Also, Bhai Gurdev Singh was allowed to meet outsiders in the office of the petitioner, and the visitors were also allowed to move inside the jail without being searched.

The Enquiry Officer (respondent No.3) has also stated in his

report that on being cross-examined by the petitioner, this witness stated that on 13.11.1986 he saw that no curtains had been put on the doors and windows of the barracks and that barrack No.3 was open at 4:00 AM for starting 'Akhand Paath', under the order of the petitioner, which was prior to the scheduled time under the rules.

This Assistant Superintendent (PW2) also, again like PW1, stated that he never made any report relating to putting up of the curtains on the doors and windows, in view of the orders of the petitioner.

However, it is also to be noticed that the petitioner did not cross question this witness with regard to shifting of four prisoners from barrack No.6 to barrack No.7, during his tenure as Superintendent, on 20.11.1986.

(61) The report further refers to the testimony of PW3, Balbir Singh, again an Assistant Superintendent, as being the same as that of PWs1 and 2, with the addition that this witness stated that inflammatory speeches against the Government were delivered by the prisoners in barrack No.3 on 16.11.1986 and that after the 'Bhog' ceremony, the petitioner promised to accept all demands put forth by the prisoners. He further stated that the petitioner remained present through out the 'Bhog' ceremony.

This witness also testified with regard to the prisoners making 'cabins' within their barracks, with the help of blankets and turbans and with regard to them pasting papers on the wall. In fact, the petitioner, as per PW3, also told the prisoners that they would be supplied ropes for preparing the 'cabins' and they need not spoil their turbans. The 'lock out' time, PW3 further testified, was extended on the request of Bhai Gurdev Singh Kaunke to 12 noon, instead of 9:00 AM.

During cross-examination, this witness admitted to having stopped performing his duties as per rules, in view of the orders of the petitioner. Upon the petitioner cross-examining him as to whether he had read Paragraphs 149(b) and 163 of the Punjab Jail Manual, he replied that he was threatened to act under the orders of the petitioner as he was still on probation at that time.

A perusal of his testimony further shows that he also testified that prisoner Balwinder Singh was to be considered dangerous, as he “was an absconder”.

The witness further testified that he had not actually carried out any search on 12.11.1986, though he showed it could have been carried

out, as per the petitioners' instructions. Similarly, he stated that Wardens and Head- Wardens were also not carrying out searches as required, on the directions of the petitioner.

Though the petitioner cross-examined this witness very extensively, as regards the shifting of four prisoners from barrack No.6 to barrack No.7 on 20.11.1986, the line of cross-questioning, even to him, does not suggest that these four prisoners were not so shifted. The suggestion put to this witness by the petitioner, was whether any other shifting, apart from those four prisoners, also took place on 20.11.1986.

Thus, this witness also deposed on the same lines as the other witnesses, as regards undue concessions granted to the prisoners, including allowing them to be together at one place for 4 to 5 days (for the 'Akhand Paath' and 'Bhog' ceremony), putting up of the curtains in the barracks, deliverance of an instigating speech by Gurdev Singh Kaunke, shifting of prisoners from barrack No.6 to barrack No.7 at the instance of the petitioner in November 1986, pasting of papers on the walls of the barracks, allowing extra time to the prisoners to roam around the jail premises against the rules, and allowing another prisoner, Balwinder Singh 'Fauji' to be shifted to barrack No.7 on the request of one Major Singh.

On a perusal of his cross-examination by the petitioner, we do not see any dent made in the witness' deposition, with regard to the laxities.

(62) Dr.Satnam Singh, Medical Officer of the Jail, appeared as PW4 before the Enquiry Officer and reiterated the version of the other three witnesses, with regard to freedom given to the prisoners at the time of the 'Gurpurab celebrations' (during the days of the 'Akhand Paath'). He further testified that often he was told, during his visit to the barracks for medical examination, that a particular undertrial had gone to barrack No.3 to pay obeisance and that he required medical attendance and as such, he (PW4) should either wait for the prisoner to return, or himself go to barrack No.3. He further testified that even after the 'Akhand Paath', undertrials were often not locked up after lock-up hours in the morning, and due to this he faced a lot of difficulties in performing his duties, because earlier all the undertrials were being examined one by one within the 'Ahata' of a particular barrack/cell, but thereafter, they started 'crowding him' at the time of medical examination. This witness testified that on one of his visits to barrack No.7, he saw undertrials moving around freely and doing exercises within the 'Ahata' and on being asked, they told him that they had been given a number of relaxations, for which they were helped by Kaunke,

former 'Jathedar' of the 'Akal Takht'. He stated that though he had brought these matters to the notice of the petitioner, he told him that they were dangerous and should be dealt with tactfully and rules have been relaxed for them, over a period of time.

This witness also testified with regard to the Commandant of the BSF coming and telling the petitioner, in the presence of this witness, with regard to prisoners trying to touch the top of the enclosure wall, behind their barracks.

Though the testimony of this witness has not been referred to *in extenso* by the Enquiry Officer, we have reproduced certain parts of it from the record itself, while verifying as to what was actually testified to by him, because the reference to this witness, on charges No.1 and 2, is indeed very brief, as contained in paragraph 9 of the Enquiry Officers' report.

All in all, this witness also testified to loose administration, and was not cross-examined by the petitioner.

(63) Harjit Singh Sidhu, who was a Deputy Superintendent (under training), of the Jail, though working as a District Food Supplies Controller at the time of his testimony, appeared as the last witness for the Department, PW5, and more or less reiterated what was testified to by the other four witnesses.

As regards barrack No.7, he testified that in his view, barrack No.7 was insecure because it was the only barrack to which the Central Security Tower could not have clear observation, because of a tree. He also testified that the under trials accused of terrorist activities ultimately starting putting pressure that the cells should be allotted as per their group affiliations and that some of the under trials were shifted to barrack No.7. He also testified with regard to the attempted jail break on the night of 1/2 January, 1987 and with regard to the condition of one of the Wardens after he had been killed.

In cross-examination by S.S. Thind, this witness however did state that he did not see eight under trials in one cell (amongst other questions that he answered).

This witness was not cross-examined by the petitioner.

This witness is stated to have been introduced at a late stage. As per the petitioner, he was introduced to fill in a lacuna, whereas the stand of the respondents is that he was introduced, having been inadvertently left out from the list of witnesses initially, and therefore,

in terms of Rule 8(15) of the Rules, he was permitted to be called as a witness.

We may say here that the fine line between filling up a lacuna or making good an inadvertent mistake, is not always clear, but suffice to say that even if this witness' deposition is to be discarded, it again is on the same lines as those of other witnesses for the department, as regards loose administration.

(64) After the last of the departments' witnesses, we now need look at the evidence of the witnesses who were examined in defence of the petitioner.

DW1 was one Gurbachan Singh, Head Warden of the Security Jail at Nabha who deposed that he joined his duty on 01.01.1997 and that his namesake, Gurbachan Singh Giani, was earlier posted at Nabha but had since died.

The petitioner thereafter stated that in fact, he wanted to summon the other Gurbachan Singh and did not want to examine this witness.

(65) DW2 was one Ajit Singh, a retired, Head Warden, who deposed that he did not remember where he was posted in the 1st week of December, 1986, after which he was requested to be declared hostile by the petitioner and though was not declared so, questions were allowed to be put to him, to the extent as to by whom he was summoned to appear, to which this witness replied that it was by some uniformed person.

On cross-examination by the Presenting Officer, this witness also stated, like the prosecution witnesses, that an 'Akhand Paath' was organised in Ward No.3, attended by all prisoners lodged in jail, including those lodged in the "Chakkies". He referred to a speech made by Gurdev Singh Kaunke and Balbinder Singh Loham against the Government and also stated that the petitioner and other officers of the jail were present. This witness again, also stated with regard to work relating to searches not being performed.

Thus, of the defence witnesses, undoubtedly, DW2 again testified against the petitioner and was asked to be declared hostile.

(66) DWs3 and 4 were also former Jail Department Wardens, who did not depose in favour of the petitioner, as regards the issue of loose administration and were asked to be declared hostile but were not so declared. However, the petitioner was allowed to put questions to them.

As regards DW3, Wasu Ram, the petitioner simply asked him as to what happened after the incident of attempted escape. This question was disallowed by the Enquiry Officer, as not being material to the proceedings. However, the witness still replied that he was placed under suspension but he was reinstated on 05.01.1987, without any punishment meted out to him.

DW4, Atma Singh, on 'further examination' by the petitioner, stated that whenever he and others tried to lock up prisoners at the prescribed bed time, they used to refuse on the ground that they had been given relaxation upto three hours by the Superintendent. The witness further stated that this fact was brought to the notice of the petitioner, with the request that the relaxation should be withdrawn.

He also put the entire blame of the attempted escape upon the petitioner.

(67) DW5, H.S. Bal, was one of the officers also charged sheeted alongwith the petitioner. He deposed that at the time when he joined the Jail Department, on 26.12.1986, the conditions relating to searches were not normal, which he incorporated in the Superintendents' Journal. He specifically pointed to the entry dated 27.12.1986 to state that after the lock out time in the morning, prisoners were allowed to move freely upto 11:00 AM, within the compound of the barracks. He also stated that the administration of the jail was very loose and the Wardens were demoralized on account of the undue concessions and relaxations granted to the prisoners.

This witness' deposition, thereafter goes on to state that he tried to introduce the system of searches and also got removed the curtains from the barracks and took various measures to restore the morale of the staff etc. Thereafter, he went on to narrate about the steps taken immediately after the incident. He also narrated with regard to shifting of prisoners from 28.12.1986 onwards from barrack No.6 to barrack No.7 and about the statements that he made in the enquiry held by the S.D.M., Nabha and the IG Prisons.

The recording of the evidence shows that when this witness was called back for further examination-in-chief on 15.04.1995, though the petitioner wanted to ask him more questions about the 'Night Report Book', that was disallowed during examination-in-chief by the Enquiry Officer. Thereafter, the petitioner stated that he did not wish to examine him further.

It is pertinent to notice that the petitioner did not ask that this

witness be declared hostile.

(68) DW6, B.S. Sandhu, i.e. respondent No.2, we have already discussed; however, since his deposition is missing from the file put up before us by the Government, we refer to it only from the report of the Enquiry Officer, a perusal of which reveals that the reference to this witness' deposition, by the Enquiry Officer, is almost entirely based on the report submitted by this witness (respondent No.2) on 09.01.1987. As stated by the Enquiry Officer, respondent No.2 had wholly indicted the petitioner, holding that he had yielded to every demand of extremists and was following a policy of appeasement towards them.

On the other hand, he (respondent No.2) wholly endorsed the functioning of the Presenting Officer, G.S.Gill, as Deputy Superintendent of the Jail, who remained incharge immediately before the petitioner.

Thus, the testimony of respondent No.2 (as DW6), was wholly against the petitioner, as seen from the enquiry report. As such, we see no reason why the Enquiry Officer (respondent No.3), should not have declared him to be hostile, as demanded by the petitioner. However, since he was neither declared hostile upon the petitioners' request nor, as per the enquiry report, was he allowed to put any further questions by the petitioner, we wholly discard his testimony.

(69) DW7, Kamal Jain, was a witness not with regard to the conditions prevalent in the jail, but an official of the head office, who deposed with regard to disciplinary proceedings against different witnesses. The significance of the deposition of this witness, is with regard to the disciplinary proceedings not having been seriously pursued against other officials, like head wardens/wardens and even Assistant Superintendent (DW11 -W.S.Sawhney), though the petitioner and the other two officers were so proceeded against.

(70) One Jasbir Singh, Senior Clerk in the office of the I.G. Prisons, Punjab, appeared as DW8 and deposed with regard to office record in respect of DW11, W.S. Sawhney, Assistant Superintendent, and others placed under suspension after the attempted jail break and reinstatement of W.S. Sawhney on 05.01.1987. He also stated that Sahni was not charge-sheeted and was allowed to retire prematurely, w.e.f. 26.04.1987, without prejudice to any disciplinary proceedings. However, till the date of his deposition (16.04.1995), the witness stated that no such proceedings were initiated against Sahni. He also deposed that only Wasu Ram (DW3) was issued a charge-sheet on 17.07.1991,

in response to which he had made a representation on 31.03.1993 stating that the disciplinary proceedings against him be kept pending till the decision against the other officers. He further deposed that Wasu Ram was promoted as a Head Warden on 24.11.1988 and continued as such.

As per this witness, Atma Singh, Head Warden, was also not charge-sheeted and was allowed to retire prematurely w.e.f. 31.01.1988, from the Ferozpur Jail.

(71) DW9, M.L. Sandhu, retired DIG, deposed in favour of the petitioner but giving his opinion as a person who was not posted in the jail. He stated that he was posted as AIG, Head Quarters and had been visiting the Nabha Jail and other jails in his official capacity, from time to time. During his visits, he stated that he did not find any such irregularities or lapses on the part of senior officers posted at Nabha Jail that could lead to such type of an incident. In his opinion, the incident had happened due to a sudden development, including absence of some senior officers from the jail and not on account of any prolonged or continued irregularities.

He also deposed that the building of the jail was very old and required repairs and that this was in the knowledge of officers at the head office.

The witness further deposed that the prisons department was, at that time, not prepared or equipped to meet the challenges posed by terrorists and that the requirements of the prisons department had been summed up by the IG Prisons, in his report (dated 09.01.1987). According to this witness, had these requirements been fulfilled, including repair of the building, the incident may not have happened.

He further stated that in view of the prevalent situation in the jail, it was required that a competent Superintendent should have been posted there after the petitioner was transferred out. In his opinion, S.S. Thind, Deputy Superintendent who was incharge when G.S. Gill proceeded on leave, was not a right choice.

The retired DIG further stated that the Government collects information about the situation prevailing in the jails from various sources and that to his knowledge, there was no report which could suggest any connivance of the officers and the officials of the jail department, with the prisoners.

The witness qualified his deposition at the end, stating that since

he was posted as AIG prisons who looked after industries and jail buildings, he did not have any direct link with the general administration of the prisons department.

Though this witness was not cross-examined by the Presenting Officer, the Enquiry Officer asked him that had Mr. Goyal not been transferred from the Nabha Jail, would the incident of attempted jail break have taken place or not. The witness replied that according to him, it would not have happened.

The next question posed to him was whether the transfer of Mr. Goyal was the only factor which led to the incident, to which the witness replied in the negative and stated that it was a sum total of the other factors to which he had made reference in his examination-in-chief.

In the last part of his deposition, he admitted that he did not have any direct link with the general administration of the department.

(72) Strangely, neither in the report of the Enquiry Officer nor in the Government file put up to us, is there any reference to any person who appeared as DW10. Though we must notice that there are obviously five pages that are missing, from Sr. No.77 to 81, in the photocopy of the file containing the statements of the DWs. These five pages correspond to the place where the testimony of DW10 would have been, who ever he was.

Again, the removal of the said testimony is obviously deliberate, for which the Government needs to be indicted.

(73) DW11, W.S. Sawhney, deposed wholly heartedly in favour of the petitioner but eventually backtracked during cross-examination, with regard to the issue on shifting of prisoners to barrack No.7 during the tenure of the petitioner, to the extent that he corrected himself to say that many prisoners were shifted on the 27/28th December and not that none were shifted during the petitioners' tenure.

He also stated that according to him, barrack No.7 was more secure than barrack No.6 and that prisoners were shifted from barrack No.6 to barrack No.7 by Deputy Superintendent, S.S. Thind. As per this witness, administration in the jail was strict. He also deposed that the prisoners who had been shifted to barrack No.7, were put in the same Cell No.10, on 01.01.1987. He also, deprecated the condition of the jail building.

On cross-examination by the Presenting Officer, he stated that he

did not know who gave permission for performance of 'Akhand Paath' and thereafter, deposed with regard to his own duties on 19.11.1986. He also stated that on the night of the attempted escape, barrack No.7 was under his charge but he had not conducted any search of the prisoners on 01.01.1987.

He next stated that there was no opening in the wall at the time of closure of the Cell ("Bandi") and further deposed that there was a mango treee in front of barrack No.7.

The next part of his deposition is with regard to the action taken by him and others upon the alarm of escape being sounded.

On re-examination by the petitioner, he put the blame of selection of 'Paathies' on S.S. Thind and G.S. Gill and further stated that there was no visible difference in the work relating to searches, prior to the 'Bhog' ceremony and after that.

The witness also stated that he had protested when S.S. Thind had transferred prisoners from barrack No.6 to 7, as the numbers of prisoners between the two barracks became distorted.

Thereafter, the Enquiry Officer put various questions to this witness with regard to the alleged threat meted out to him by respondent No.2 and also asked him as to what influence the IG would have upon him, after he (witness) had retired. He was also cross-questioned with regard to the number of 'paathies' required to recite from the Guru Granth Sahib during 'Akhand Paath', etc.

Pertaining to the petitioner, the Enquiry Officer asked the witness as to how many prisoners were shifted to barrack No.7 during the petitioners' tenure to which the witness first replied that he did not remember and thereafter he was reminded of his earlier statement that none of the prisoners who were in barrack No.7, as had attempted to escape, were transferred to the barrack during the petitioners' tenure. To that question, DW11 stated that when he had made that statement, he did not mean it and in fact, meant to say that many prisoners were shifted from barrack No.6 to 7 on the 27th /28th December 1986 (after the petitioner had been transferred out).

(74) DW12 was an unimportant witness who simply stated that he had no personal knowledge about the incident of attempted escape. The witness was not cross-examined by the Presenting Officer.

(75) Other than the petitioner, when he appeared as his own defence witness, the other person posted at the jail, as a Warden, was

the first cousin of the petitioner, Tarsem Lal, who deposed entirely in his favour, as DW13.

This witness first stated about summons being served upon him to appear in the enquiry proceedings by different persons but that he did not wish to appear earlier and was eventually threatened that he should not speak against the prisons department. According to him, he was threatened with his life.

Thereafter, he deposed that the petitioner exercised strict control over his staff, as also prisoners. He referred to the two extremists who used to call upon by the petitioner in connection with the incident in the Kapurthala jail and further deposed that the petitioner had congratulated G.S. Gill on his promotion and had arranged a party to celebrate the occasion, in which the aforesaid extremists were also present.

The witness also deposed that after the petitioners' transfer to Gurdaspur, H.S. Bal and S.S. Thind used to visit G.S. Gill at his residence and did not pay much attention towards jail administration.

The witness further deposed that the officers of the jail celebrated New Year eve on 31.12.1986 till late at night and continued with the celebrations on 01.1.1987.

He also deposed that before the incident, the 8 prisoners who attempted to escape were never put in the same cell and that on 04.01.1987 H.S. Bal and Thind had allowed those prisoners to meet Gurdev Singh Kaunke. The witness further deposed that on 04.01.1987 the jail Wardens had gone on strike to protest against the aforesaid relaxations given to the prisoners.

Upon cross-examination by the Presenting Officer, DW12 admitted that he was the petitioners' first cousin, as his father and the petitioners' father were step-brothers. He, however, denied that he was appointed by the petitioner and stated that he had won his case from the High Court. Thereafter, he admitted that on 29.10.1986, the Superintendent Jail, Sangrur, had written to the petitioner mentioning that he (DW12) was working in Sangrur Jail as a temporary warden and in case he fulfills the qualifications, he may be so appointed. Consequently, he was appointed as temporary warden under the petitioners' order in Nabha Jail.

On the petitioner re-examining him the witness stated that he did not live with the petitioner but with other Wardens.

On the Enquiry Officer questioning him as to whether he had made any report to the police with regard to the threats meted out to him, he admitted that he had not. After that, he was asked about the number of times that the two extremists had met the petitioner, to which he replied that it was once or twice. The subsequent questions by the Enquiry Officer are not of much significance.

(76) The petitioner, while examining himself as DW14, first gave the background of his career from the time when he joined as a Clerk and his selection in the Jails Department, including an episode when he was posted at Bathinda with regard to him and his colleagues having over powered some subordinates who were indulging in immoral activities. He also highlighted his achievements during the time when he was posted at various jails, as also when he had to face irate prisoners, his handling of a bad situation in Central Jail, Ludhiana and his opening of new jails which became a model for other jails. He also stated with regard to him having replaced other Superintendents, to handle tricky situations in different jails.

He thereafter spoke of an incident where respondent No.2 was insulted by his predecessor, Mr. Katoch, with the former suspecting the petitioner to have instigated Mr. Katoch. Thereafter, his testimony relates to the circumstances of appointment of respondent No.2 as IG Prisons and how respondent no.2 was thereafter responsible for posting the petitioner to Nabha, allegedly just to keep him out of Chandigarh and away from Mr. Katoch.

The petitioner further deposed that he used to collect intelligence reports from his own sources within the Jail and send them and discussed them with police officers and respondent No.2.

He further stated that respondent No.2 became annoyed with him also on account of the fact that some of the petitioners' family members had issued a notice under Section 80 CPC, claiming damages of Rs.5,00,000/-, due to the transfer of the petitioner to Nabha Jail. Thereafter, the testimony goes on to narrate the hierarchy by which the petitioner was actually to become IG Prisons after Mr. Katoch, respondent No.2 and M.L. Sandhu.

In other words, the allegations now made in the petition, that respondent No.2 orchestrated things in a manner to ensure that he remained posted as IG Prisons till his retirement, were deposed to by the petitioner.

(76-A) As regards the intelligence report leading up to the

attempted jail break, the petitioner stated that he had left charge on 24.12.1986 and G.S. Gill was appointed as Superintendent in his place but since he was on leave, H.S. Bal was ordered to take over till G.S. Gill returned from leave. However, he stated that Bal continued make excuses, upon which respondent No.2 ordered the petitioner to hand over charge to S.S. Thind.

As per the petitioner, he handed over charge of the jail in perfect condition and 8 days thereafter, on the night of 1/2.01.1987, the attempted escape took place. According to the petitioner, respondent No.2 found this to be "a God given opportunity" to implicate the petitioner and as such, he submitted his report on 09.01.1987, holding the petitioner to be *prima-facie*, guilty of creating a situation leading up to the occurrence. The said report, the petitioner alleged to have been made without any oral or documentary evidence having been referred to in it. The petitioner has referred to the report of respondent No.2 as an "emotional outburst".

The deposition goes on to narrate the killing of T.C.Katoch on 10.01.1987, intelligence reports indicating that the petitioner was their next target, alongwih other officers who were implimenting Government policies and extending assistance to T.C. Katoch.

He also stated that respondent No.2 was actually appointed to the post of IG by the Government to appease terrorists. As such, as per the petitioner, the report dated 09.01.1987 was wholly one sided and in fact, was shelved away by the Government.

The petitioner next deposed with regard to him having made an application to the top echelons of Government to go into the issue, upon which he was asked to furnish information, which he did on 30.09.1994 (his application having been made on 11.09.1994). However, as per the petitioner, he received no further communication from the Government in that regard.

Thereafter, the testimony goes on to state that despite the report of respondent No.2 having been shelved, he continued to "pin-prick" the petitioner, leading to the petitioner seeking voluntary retirement and, thereafter, since respondent No.2 felt that the act of the petitioner might go against him (respondent No.2), he advised the petitioner to withdraw his request.

Though the petitioner withdrew the request, allegedly respondent No.2 developed a close relationship with the next Chief Minister and in March 1992, managed to bring out the 'dead issue' of the attempted jail

break after more than five years, leading up to the petitioner receiving a notice from the Home Secretary. The petitioner further stated that he had met the Additional Home Secretary and had explained that he had nothing to do with the occurrence, after which, in July 1992, he received the impugned charge sheet.

(76-B) The testimony with regard to charges No.3 (building condition) and 5 (non-maintaining of the barrack register) is not of much insignificance, except that the petitioner gave the details of all the efforts made by him, to get the jail building repaired.

With regard to the main charges, the petitioner stated that barrack No.7 was the most secure place in the jail as all the prisoners confined in that barrack were sitting ducks, being directly visible from the tower on the wall, where a Light Machine Gun was fitted. According to the petitioner, the 'little mango tree' did not hinder the view from any side, including the tower, though a person could camouflage himself behind the tree.

Thereafter, he went on to describe the bad condition of the barrack walls of barrack No.6, stating that they were weaker than barrack No.7.

He gave instances where people double the number of cells in different barracks were shifted to such barracks only to avoid putting them in barrack No.6.

He further stated that when he had left charge, the number of prisoners in barrack No.7 was 41, whereas on 28.12.1996, 16 prisoners were shifted to barrack No.7 from barrack No.6 and 30 from barrack No.2 to barrack No.7, whereas only one was shifted from barrack No.7 to barrack No.4.

He further gave details of 8 prisoners being moved into a single cell, i.e. Cell No.10, whereas 21 prisoners remained in 9 other Cells (thus, approximately 2 to 3 in one Cell). As to why that was done, the petitioner stated that he could not understand (he having already handed over charge one week earlier).

As regards putting of Balbinder Singh in barrack No.7, the petitioner stated that he had received 63 prisoners on transfer, the said prisoner being one of them. Out of these, 54 were confined in barrack No.7 on the same day, including Balbinder Singh, as barrack No.7, at that time, had only 4 prisoners, with the others having been earlier shifted out to accommodate those arriving from other jails.

This accommodation, as per the petitioner, was not at his instance, because he had left the jail premises to attend a court case, in which he had been summoned and the entire shifting, according to him, was done by S.S. Thind, Deputy Superintendent, Harjit Singh Sidhu and Surinder Kaushal, Assistant Superintendents. As per the petitioner, there was no entry made by him with regard to the transfer of prisoners, as he was not present in the jail in the after- noon (of 28.11.1986).

(76-C) As regards allegations of non-searching of the jail, the petitioner stated that the charge was uncalled for (in connection with the attempted jail break), as large scale shifting from (and to) barrack No.7 had taken place on 28.12.1986 and presumably, at that time the wardens and the prisoners and their belongings were searched as required under the Rules.

(76-D) Specifically on charges No.1 and 2, i.e. loose administration and giving special concessions to prisoners, the petitioner stated that the allegations were wholly belied, as all that was going on in the jail was an open secret, as many intelligence agencies had posted men around the jail to give reports of the things going on there, and as such, if there was anything untoward going on, it would have been reported and rectified (obviously meaning during the six months' period that the petitioner remained posted in the jail). However, he deposed that no such report was sent and that he, in fact, had disallowed a prisoner to keep a 'Kirpan' larger than that was allowed, upon which a hunger strike was resorted to, which was then called off when respondent No.2 ordered the return of the 'Kirpan' to the prisoner.

Other than that, the petitioner stated that he had been informing senior officers from time to time, appraising them of the entire situation prevailing in the jail. He also made 24 reports in that regard, in the 6 month period that he remained in the jail.

He further stated that no special concessions were given and that even Gurdev Singh Kaunke had to approach the District Magistrate for seeking interviews and to file a writ petition in this Court for that purpose (as the petitioner had not allowed it). He also stated that all that happened during the interviews was duly reported by him to respondent No.2, and duly noted in the report book.

The testimony thereafter goes on to state with regard to respondent No.2 directing him to elicit information from Balbinder Singh and Jagjit Singh, with regard to their earlier escape from

Kapurthala Jail, killing a 'Durban' and a 'Sentry'. It was due to this, the petitioner stated, that he used to call them and offered them tea etc., to create a rapport with them, as directed by respondent No.2.

According to the petitioner, the tea used to come from the house of G.S. Gill (which was objected to by Gill stating that the petitioner was lying).

(76-E) As regards the party given, including prisoners being present in it, the petitioner stated that he had been informed by respondent No.2 of his promotion as Superintendent of a Central Jail and posting of G.S. Gill as Superintendent of the Nabha Jail, upon which he informed G.S. Gill of the same, who was on medical leave on account of a fracture. He therefore asked G.S. Gill to send some tea on the auspicious occasion (which again was refuted by Gill).

On that occasion, he had also called the aforesaid prisoners and recorded their statements. Thereafter, as per the petitioner, the tea and eatable that could not be consumed in his room, were sent outside and all this had been clearly reported by the petitioner to respondent No.2.

According to the petitioner, the Night Report Book dated 30/31.12.1986 and 1/2.01.1987, relating to the night rounds made by the Deputy Superintendent, had been tampered with.

(76-F) On cross-examination by the Presenting Officer, the petitioner denied relaxation of any rules etc., also denying the truth of questions put to him with regard to specific prisoners, to the extent that it was not under the petitioners' orders that they were shifted.

He denied that any 'Akhand Paath' was allowed by him inside the Gurdwara except in the month of November 1986 and stated that he did not remember the shifting of 15 prisoners to barrack No.3 for the purpose.

Similarly, he also denied various suggestions made to him by the Presenting Officer, suggesting loose administration and giving undue concessions.

(76-G) Upon re-examining himself, after the cross-examination, the petitioner stated that he had only signed the order dictated by respondent No.2, for posting S.S. Thind as the Deputy Superintendent at Nabha Jail.

Thereafter, the Enquiry Officer put various questions to him, which were mainly in connection with conditions prevailing in various

parts of the State during those days, including in the Ludhiana Jail and pertaining to threats received by other jail officials and officers, to which the petitioner stated that to his knowledge, four persons received such threats. He further stated that about seven officers/officials were killed.

As regards respondent No.2 having been turned out of the house of Mr. Katoch, the petitioner replied that respondent No.2 had himself told him about the incident.

Thereafter, the questioning by the Enquiry Officer, was with regard to the timing of the litigation initiated by the petitioner and with regard to alleged harassment of M.L. Sandhu by respondent No.2. The implication of that question was that it was actually Government that had censured M.L. Sandhu and not respondent No.2.

The other question, with regard to the height of the mango tree outside barrack No.7, was obviously because the petitioner had referred to it as a "little mango tree". The petitioner replied that the tree was, in fact, 10 to 12 ft. tall.

Finally, the Enquiry Officer asked him if any fund was available with the Superintendent of the Jail for carrying out repairs, to which the petitioner answered in the negative. He also stated that he was present in Nabha Jail on 06.12.1986.

(77) The four witnesses summoned by the Enquiry Officer (as "Court witnesses"), were all officials/officers of the Public Works Department/Public Health Department, in relation to communications sent to them for repair of the jail. The witnesses testified to having received letters from the petitioner and after his departure, from others, relating to repair of the jail and also stated that actually no repairs took place, other than electrical works.

(78) Before we consider the effect of the depositions of the witnesses before the Enquiry Officer, the relevant rules, governing the duties of a Superintendent of Jail, as have have been reproduced by the Enquiry Officer in his report, need to be cited by us, to determine as to whether the petitioner performed his duties in the manner that they should have been performed or not, even in the light of the depositions of the witnesses. The said provisions from the Punjab Jail Manual, as are relevant, are reproduced hereinunder:-

> "Paragraphs 66. **Duties of Superintendent generally stated.** (1) Subject to the orders of the Inspector-General, the

Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2). Subject to such general or special directions as may be given by the Local Government, the Superintendent of a prison other than a central prison or a prison situated in a presidency town shall obey all orders not inconsistent with the Prisons Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

68. General duties of the Superintendent. - It shall be the duty of every Superintendent of a jail to-

(a). provide for the support, care and custody of and control over, all prisoners at any time confined in the jail;

(b) maintain order and discipline amongst the prisoners confined, and the Subordinate officers employed, in the jail;

(c) control all expenditure relating to the jail;

(d) inquire into and adjudicate upon all alleged prison-offences and breaches of discipline and to punish all those who are found guilty of having committed any such prison-offence or breach of discipline in due course of law; and

(e) generally to take all such measures as may be necessary or expedient for the proper protection and management of the jail and of all prisoners at any time confined therein and for the purpose of giving effect to and enforcing the provisions of the Prison Act, 1894, and all rules, regulations, orders and directions made or issued thereunder, as may be applicable thereto or to any prisoner confined therein or any thereof.

70. Superintendent to visit jail daily.First duty at each visit.- (1) The Superintendent shall visit the jail at least once on every working day, and on Sunday and holidays also wherever special circumstances render it desirable that he should do so if, from any cause, the Superintendent is prevented from or unable to visit the jail on any day on which he is by this rule, required so to do, he shall record the fact and cause of his absence in his journal.

(2) The first duty of the Superintendent, on the occasion of his daily visit to the jail, shall be to release time-expired convicts,

in accordance with the provisions of the law and these rules in that behalf, and shall in discharging this duty, in particular, observe the rules relating to the return of their private property and the grant of proper subsistence allowance to such convicts.

71. Prisoners to be seen daily, in certain cases once every two days.- The Superintendent of a District Jail shall, as far as practicable, see every prisoner in his charge daily and the Superintendent of a Central Jail shall likewise see every prisoner in his charge once in every two days.

71-A. Inspection of food by Superintendent.- The Superintendent of a Jail shall inspect the food prepared for prisoners' meals at least three times, in each week.

73. Superintendent to visit Jail periodically at night.-The Superintendent shall visit the jail after lock-up and between the hours of sunset and sunrise,

a) if he is a whole-time Superintendent at least once a fortnight,

b) if he is a part-time Superintendent at least once a month. and shall satisfy himself, at each such visit, that the jail is properly secured and guard and that all rules and orders in any way relating to or connected with the nightly disposition of prisoners, warders and officers of the jail and the duties to be performed by warders and officers at night, are duly observed and carried out.

74. Jails to be inspected and maintained in an efficient state.- The Superintendent shall frequently visit and inspect every barrack, yard, cell, workshop and latrine, as well as the armoury, warders lines and every other part of the jail and its precincts and all premises belonging or attached thereto, or connected therewith, and shall satisfy himself that all buildings, structures, enclosing walls and the like are secure and are maintained in the best possible state of repairs, and that every part of the said jail precincts and premises is kept clean and in an efficient sanitary condition.

76. Superintendent to visit jail garden at least once a week.- The Superintendent shall visit the jail garden at least once a week and satisfy himself that all necessary measures are being taken therein for the purpose of cultivating and producing an ample and continuous supply of vegetables, condiments and

anti-scoubics for consumption by the prisoners; that the land included in the garden is kept in proper order and free from weeds, that the trenching of filth and refuse from the jail is effectively and duly conducted, that stable litter and other manure is suitable disposed of and that the premises generally are maintained in good sanitary condition.

399. Custody of dangerous prisoners.- (1) Every convict should be allotted a definite sleeping berth, the number of which should be noted in his history-ticket. Wandering about the sleeping barracks at any time is to be strictly prohibited, and the fact of any convict leaving his sleeping berth for any purpose whatever should at once be reported by the convict-official on duty to the patrolling officer who will note the case and inform the Deputy Superintendent on the latter official entering the jail on the following morning.

(2) Prisoners should not be allowed to approach the gratings unnecessarily and sleeping on the floor between the sleeping berths in the barracks is to be strictly prohibited.

(3) Special precautions should be taken for the safe custody of dangerous prisoners whether they are awaiting trial or have been convicted. On being admitted to jail they should be (a) placed in charge of trustworthy warders, (b) confined in the most secure building available, (c) as far as practicable confined in different barracks or cells each night, (d) thoroughly searched at least twice daily and occasionally at uncertain hours the Deputy Superintendent must search them at least once daily and he must satisfy himself that they are properly searched by a trustworthy subordinate at other time, (e) fettered if necessary (the special reasons for having recourse to fetters should be fully recorded in the Superintendent's journal and noted in the prisoner's history ticket). They should not be employed on any industry affording facilitates for escape and should not be entrusted with implements that can be used as weapons. Warders on taking over charge of such prisoners must satisfy themselves that their fetters are intact and the iron bars or the gratings of the barracks in which they are confined are secure and all locks, bolts etc. are in proper order. They should during their turns of duty frequently satisfy themselves that all such prisoners are in their places, and should acquaint themselves with their appearances.

> **Light to be kept burning at night.-** (4) From sunset to sunrise a good light shall at the discretion of the Superintendent be kept burning in front of the grated door of every cell in which a dangerous prisoner is confined, so that he may at all times be under observation.

(79) A perusal of the aforesaid provisions, specifically paragraphs 68 and 399 of the Manual, would show that an onerous duty has been cast upon the Jail Superintendent to ensure that discipline in the jail is maintained and that there is no breach thereof by any of the prisoners.

The Enquiry Officer, as already seen at the outset, in the background of the Rules and the testimonies of the witnesses, held that the first two charges of loose administration and giving special concessions to prisoners, were fully proved, charges No.3 and 6, i.e. of the building being in a dilapidated condition and of the prisoners' frequently mixing with officials, being partly proved; charge No.4 with regard to moving of prisoners from barrack No.6 to 7, thereby allowing them to conspire to escape, to be mainly proved; and of charge No.6 of not maintaining the 'barrack close register', to be not proved.

(80) The Government, thereafter, is stated to have accepted the enquiry report in toto, but while issuing the impugned order dated 29.09.1995, showed charge No.4, alongwith charge No.5, to be not proved, whereas it was, actually, shown to be mainly proved by the Enquiry Officer.

(81) We have appraised the evidence almost as this Court would do in a criminal appeal. We felt the necessity for the same, contrary to the ratio of the law that in disciplinary proceedings, the conclusions reached, if accepted by the competent authority, would not be interfered with by this Court. However, since, for reason of two decades having gone by, we find it infeasible to order a re-enquiry, despite the two lacunae that we have pointed out in the enquiry proceedings, hence, in our opinion, appraisal of the evidence is necessary to hold in favour or against the findings in the enquiry report.

(82) Coming then first to the prosecution witnesses.

PW1, we have already held, may have been prejudiced against the petitioner in view of the fact that he was suspended on the petitioners' orders/recommendation. However, even if we discard his testimony, the other four witnesses for the department, also deposed wholly against the petitioner.

As regards the defence witnesses, the testimony of DW6, i.e. respondent No.2, we have already held is not to be considered because the petitioner was given no opportunity to either cross-examine him or even to further question him, despite him having testified against the petitioner, as is obvious from the enquiry report.

Yet, the other defence witnesses also, i.e. other than the petitioners' first cousin Tarsem Lal (DW13) and M.L. Sandhu (DW9) could not be said to have deposed entirely in favour of the petitioner. DW11, W.S. Sawhney, though deposed in favour of the petitioner, however, in his cross-examination, he backtracked on the issue of shifting of the prisoners from barrack No.6 to barrack No.7 in November 1986.

Of the remaining defence witnesses (other than the petitioner himself), DWs1 and 12, in fact, did not testify to any effect at all and DWs7 and 8 only testified with regard to disciplinary proceedings etc. and record summoned from the head office.

Thus, DWs2, 3, 4 and 5 did not depose in favour of the petitioner.

(83) Weighing the testimonies of those who appeared for the petitioner and those for the department, we are unable to hold the testimonies of the petitioner himself and of W.S. Sawhney as overriding the testimonies of those who did not stand in his favour, even being defence witnesses.

M.L. Sandhu, who deposed in the petitioners' favour, admitted that he was not incharge of the administration, though he gave his opinion to the effect that the petitioner was a good officer and was not responsible for the events. However, with Sawhney having backtracked on a major issue, we cannot disbelieve the testimonies of 8 witnesses who testified against the petitioner on granting undue favours to prisoners.

Hence, we find no reason to reject the Governments' acceptance of the findings of the Enquiry Officer, on the charges of loose administration and giving undue concessions to the prisoners, against the rules, no matter what the motive of the petitioner may have been.

Mr. Goyal did testify before the Enquiry Officer and submitted before us also, that if any concessions at all were given, they were in consonance with a policy to try and create a conducive atmosphere in the face of extremism, which was in the knowledge of respondent No.2. We are afraid that to the extent of the charges of loose administration

and giving undue concessions, we are unable to accept that contention.

Thus, an appraisal of those testimonies, i.e. of PWs2 to 5 and DWs2, 3, 4 and 5, does not leave any manner of doubt, in our opinion, that there was, in fact, loose administration and concessions given that should not have been given, to the prisoners. Obviously, such an atmosphere would lead to demoralisation amongst the lower staff, especially when an inflammatory speech went unchecked on the occasion of 'Gurpurab'.

Therefore, we find no infirmity in the Governments' acceptance of the findings by the Enquiry Officer on charges No.1 and 2.

(84) As regards the 3rd charge, of the building being in a dilapidated condition, the Enquiry Officer found the charge to be only partially proved against the petitioner. Though we have our reservation and would be inclined to hold that it was not the petitioners' fault if repairs were not carried out due to lack of funds or for whatever reason, however, we do not interfere in the findings on a charge which in any case would be taken to be only a minor charge against the petitioner, it not having been fully proved against him.

Charge No.5, of the 'barrack close register' not having been maintained, in any case is a charge which was not proved against the petitioner.

The charge of prisoners frequently mixing with officials of the prison, as a result of loose administration, strangely we find to be only partly proved, but again we would not interfere with that finding because though obviously that is part of loose administration, however since the actual incident of mixing between the staff and the prisoners was not found to be of any great significance, we do not interfere in Governments' acceptance on that finding either.

(85) Coming to charge No.4, of four dangerous prisoners having been shifted to barrack No.7 from barrack No.6 and being allowed to remain in one room (cell) and there having conspired to escape from the prison together, resulting in two deaths, the impugned order having first stated that the charge was not proved and thereafter, corrected to state that it was mainly proved, we leave it now to the Governments' wisdom to accept or not accept the Enquiry Officers' recommendation in that regard, for two reasons.

Firstly, the impugned order obviously lacked complete application of mind even though it is the Governments' stand that it was

only an inadvertent and bonafide mistake, the charge already having been accepted. However, in our opinion, such a mistake is a manifestation of non-application of mind, while passing the order.

Secondly, since undoubtedly, the attempted escape took place about one week after the petitioner had demitted charge, and we having already held that there was obvious lack of complete application of mind, we leave it to the competent authority, i.e. respondent No.1, to re-appraise the evidence on this charge and to take a decision thereafter.

(86) Consequently, for the reason that the impugned order obviously lacked full application of mind, in showing one of the three major charges to have not been proved and, subsequently, substituting the said order to say that it was proved, we quash the said order (original and substituted), with liberty to respondent No.1 to pass a fresh order, after due application of mind on the 4th charge.

Whether any punishment is to be given to the petitioner or not, would obviously be within the domain of the competent authorities' jurisdiction, which we leave to his wisdom, but make it clear that since a very long time has gone by, if any punishment is to be imposed upon the petitioner, it shall not be greater than the punishment already imposed upon him. Whether the same or lesser or any punishment is to be imposed, we leave to the wisdom of the competent authority.

We also make it clear that as regards the findings on the charges against the petitioner, it would not be open to him to challenge them before this Court after the passing of the order by the competent authority, because as regards such findings, as far as this Court is concerned, we have already expressed our opinion upholding them, except for charge no. 4. The matter is, therefore, remitted to respondent No.1 only on the question of quantum of punishment to be awarded to the petitioner, if any, after appreciation of the evidence and the Enquiry Officers' report on charge number 4, and other factors as respondent No.1 would generally consider while dealing with any such matter of disciplinary proceedings.

With the above, the writ petition is partly allowed, with no order as to costs.

Dr. Payel Mehta