

Nazir Ahmad Gojar (Mst Zaitoon V. State - 93/4)

This is one of the four cases in our data base where the police completed their investigation and prepared a chargesheet against the accused officers of the security forces. In two of these cases, including the present one, the central Government, which was the appropriate government, rejected the request for grant of sanction to prosecute¹. Nazir Gojar's mother, Mst. Zaitoon is a remarkable lady. She pursued the case before the High Court for ten years against virtually insurmountable odds. The family lives in a remote mountain hamlet, a few kilometres from Kupwara town. The only road to the hamlet leads through an army camp and all access is controlled by the army. The last kilometre to her house is a steep hike up the mountain. Yet, she told us that she attended each and every hearing in the case before the High Court.

Fourteen year old Nazir Gojar was arrested on 26 January 1992 by soldiers of 5 Dogra Regiment, led by Majors R.P. Singh and R.D. Singh. Two neighbours, Majid and Mohammad Ayub Gojar, who were also picked up at the same time, were released about five months later but Nazir was disappeared.²

Since the respondents did not respond to the petition for more than a year, the Court "closed" their right to file a reply. Thereafter, in November 1994, the High Court ordered an inquiry into Nazir's disappearance. The Army, initially participated in the Inquiry proceedings but later stopped attending the hearings. Based upon the testimony of Nazir's co-detainee and, eye-witness testimony regarding his arrest, in May 1996 the Inquiry Judge held that 'there was no doubt that Nazir had been arrested by the 5 Dogra' and, must be presumed to have been killed in custody.³

Under pressure from the High Court, the police registered an FIR, completed its investigations and prepared a charge sheet against the CO of the 5 Dogra and, the two officers who led the arrest party: Majors R.P. Singh and R.D. Singh. However, the police expressed an inability to arrest the accused officers. In mid 1997, the SHO Bandipora informed the High Court that attempts to persuade 5 Dogra to produce the three accused officers had failed.

¹ No information is available about the fate of the request for grant of sanction in the other two cases.

² Majid died shortly after his release, allegedly because of the torture suffered by him in custody.

³ Back before the High Court, after the Inquiry report was received, Lieutenant Colonel Vijay Singh from the 15 Corps Headquarters filed an affidavit denying Nazir Gojar's arrest.

He also stated that the 5 Dogra had been transferred out of the Bandipora area and, their current place of posting was not known. In September 1998, in response to queries from the High Court, the SSP, Baramulla stated that steps to arrest the three accused officers could only be initiated after grant of sanction by the Central Government.

In October 1998, the High Court disposed of the case on the basis of the police report that the concerned department of the State government had been requested to obtain the sanction necessary to prosecute the three Army officers. In March 1999, Nazir's family had the case reopened by filing an application, alleging that the State government had failed to comply with the Court's directions. In May 2000, the State government finally wrote to the Central government (Ministry of Home Affairs) for sanction to prosecute the accused officers. In October 2000, the Central government's lawyers informed the Court that the State government had wrongly addressed its request for 'sanction' to the Union Home Ministry rather than to the Defence Ministry; hence the delay. In April 2002, the Central government passed an order rejecting the request for sanction, citing reasons. A copy of this order was supplied to the petitioner in October 2002 and, with that the case was disposed of once again. On both occasions, while disposing of the petition, the High Court failed to pass orders on the petitioner's prayer for grant of interim compensation.

The reasons for which 'sanction' was refused by the Central government in this case, are reproduced below:

1. That out of four witnesses before the District and Sessions Judge Baramulla only one Mohammad Yousuf Gujjar has named Major RD Singh and Major RP Singh and so prosecution case is not convincing.
2. That there are contradictions in the statement of the two witnesses about the arrest and release. Ayub Khan deposed that his brothers were released the same evening but Mohammad Yousuf Gujjar said that he and his brother were released after a month from Jammu jail.
3. No witnesses blamed Colonel (now Brigadier) VK Sharma. He was named being the C.O of unit and on presumption of involvement, otherwise there was no evidence against him.
4. The Army officers denied on oath the arrest of individuals on 26 January 1992 or any other day and that they were not present in the unit during that period. In fact Major RD Singh was on annual leave for thirty days from 7 January 1992 to 5 February 1992 and Major RP Singh on casual leave of fourteen days from 22 January 1992 to 4 February 1992.

5. It is on record that the *Numberdar/ Sarpanch* of Malangam village certified on 25 February.2000 (witnessed by four prominent residents of the village) that the personnel of Dogra Regiment had not harassed or ill treated any person of the village. Nor was any man/ woman killed.

6. With regard to observation made by the Supreme Court in the Naga People's Movement for Human Rights v UOI {AIR 1998 SC 431 (Para 52)}, grant of sanction to prosecute of the Army officers is not justified based on available records and nor would it be in public interest. The prosecution of officers will undermine the morale, discipline, confidence and motivation of troops deployed in the sector. Hence sanction under section 7 of the above Act is declined.
(Ajay Prasad – Additional Secretary)