

Forty two year old **Khizir Mohammad Bhat (95/2)**, a shop keeper and a carpet weaver, was arrested by the 2 Garhwal during a crackdown on his village on 29 October 1994. Several others were also arrested. The co-detainees stated that all of them were severely tortured. All were released thereafter, except Khizir Bhat. Initially, the Army denied his custody. However, the released villagers asserted that he was being held in the Haider Beig Army Camp, forcing a senior officer in Baramulla to grant Khizir Bhat's family permission to meet him. They met him three times between 6 November and 20 November 1994. On 22 November, the Army told his father that Khizir had been released. The SHO Pattan confirmed that he had personally put Khizir in a truck going to Sopore, for being dropped off on the way. However, the SHO did not know the vehicle number or the name of the driver. Khizir's father was baffled and disbelieving of this story of "release" as he knew that had Khizir actually been released, he would have come straight home.

After waiting a few weeks in the hope that Khizir might turn up, the family filed a petition, in which the then SHO, PS Pattan was personally made a respondent. The Army did not file any response to this petition.¹ The State government took two years to file a reply saying that Khizir Bhat was 'untraced in all JICs manned by the CID in J&K'. Immediately thereafter, in July 1997, the Court ordered an inquiry into Khizir's disappearance.

Before the Inquiry, the then SHO, PS Pattan produced witnesses who testified that Khizir had been sent home in a truck in their presence. The SHO himself testified that by the time Khizir was handed over to him for being released, by the personnel of the 2 Garhwal, it was evening. He had tried to persuade Khizir to stay in the police station for the night promising that he would send him home in the morning. According to the SHO, Khizir Bhat protested this suggestion, alleging that (after the Army) now the police wanted to detain him. At this, the SHO asked a subordinate to gather a few witnesses and, in their presence, sent Khizir home in a passing truck that was going his way. The SHO stated that he did not note the number of the truck. However, he admitted that he had recorded the complete particulars of all the three witnesses to Khizir's departure from the police station.²

The Inquiry report, sent nearly five years after the Inquiry was ordered, held that the arrest of Khizir Bhat by the 2 Garhwal was confirmed. It also held that Khizir Bhat had, subsequently, been released by the Army. The Report concluded that Khizir Bhat was 'missing after he was sent in a truck by police Station Pattan'. The Report accepted the version of the then SHO, PS Pattan as being corroborated by "independent" witnesses. He, also, accepted as plausible (and true) the SHO's explanation for his failure to note the vehicle number and held that the SHO—

“has substantiated the same by deposing that during that period army as a matter of routine used to lift various persons for interrogation purposes and then used to leave them at different places. Per chance Khazir Mohd. was left in police station Pattan. Despite all this Khazir

¹ They, also, did not participate in the inquiry ordered by the High Court.

² The witnesses were, a shopkeeper, with a shop near the police station and, two passers by.

Mohd. Bhat was requested to stay in the police station, for the night but (he) insisted ... On this he was asked to go. This way negligence is not imputable”³

Back before the High Court, in objections to the Inquiry report, the State government disputed the stand of the SHO, Pattan (and the consequent finding of the Inquiry Judge) that Khizir Bhat had been “released” into the custody of the police of PS Pattan. A whole new story was advanced, supported by the affidavit of the SSP, Baramulla. He informed the Court that the 2 Garhwal had filed a report with the police about Khizir’s arrest, alleging that they had seized a grenade from his house. On that basis, the PS Sopore registered an FIR against him. It was stated that during “investigation” in this FIR, the police learnt that the Army unit had found Khizir Bhat “innocent” and released him, without notice to the police, holding that the seized material had been left in his house by some unknown militant. Thereafter, the police closed their “investigation” as “untraced”. On this basis, it was prayed that the case be dismissed qua the State government.

The High Court took no note of the incongruities that had surfaced in the case. It merely noted that the Inquiry report had exonerated the 2 Garhwal, and, had held that Khizir Bhat was put on a truck by PS Pattan after his release. Thereafter, his whereabouts were not known. On these facts, the High Court directed an FIR to be registered by PS Pattan. The police were directed to investigate and trace those responsible for his disappearance. The “sub judge Pattan” was ordered to monitor the investigation, which was directed to be completed within six months. A report in this regard was ordered to be sent to the Registrar (Judicial) of the High Court, who was asked to place the same before the Court.⁴

³ The Inquiry Judge failed to notice the glaring contradictions in the SHO’s story and testimony. On the one hand he excused his failure to note the vehicle number by claiming that in those days this was a matter of “routine”. On the other hand, his testimony showed that he was very particular, not only to ensure that there were witnesses to Khizir’s departure from the police station but, also, to note down the full particulars of these witnesses. It is as if the SHO anticipated that he would be required to prove that Khizir Bhat had left his custody, safe and sound. In response to a pointed question, the SHO stated that “as a matter of routine Khazir Mohd. was helped and was left in a truck, least knowing that the person will dis-appear”. In the face of this answer, the logical next question ought to have been— Why then, did you call for public persons to witness his departure from the police station and, why did you note down the names and addresses of the witnesses with such exactitude that several years later you had no difficulty in calling them as witnesses on your behalf in this inquiry?

⁴ To the best of our information, no such report was filed.