

LSH  
Heard at Field House

MS (Sikh - Suspected Militant  
- Internal Relocation) India  
[2003]UKIAT 00098

On 2 September 2003

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

.21<sup>st</sup> October 2003

**Before**

:

**His Honour Judge N Ainley**

**Between**

**APPELLANT**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **DETERMINATION AND REASONS**

1. This is a claimant's appeal from a determination of Mr Davey, sitting as an Adjudicator, on 8 June 2001. In that appeal the Adjudicator dismissed the claimant's appeal from the refusal of asylum, a refusal that was made by the Home Secretary on 13 March 2001.
2. The facts of this matter are briefly these. The claimant is an Indian national from the Punjab. He was born on 1 June 1953, so he is now 50 years old. He is of the Sikh religion. He joined the Indian army when he was a very young man in 1971 and he remained in the Indian army until 1987, with the rank of Sergeant. By then he had become gravely disillusioned at the treatment received by Sikh officers and other ranks after the Golden Temple events and also after the murder of Indira Gandhi by one of her Sikh body guards.

3. Shortly after he left the Indian army and when he had returned to his home area of Motiwala in the Punjab, he was approached by a person called Bhagicha Singh. That man belonged to a group headed by somebody known as Bittu; the group takes its name from that man and is called the Bittu Group. Bhagicha Singh wanted the help of the claimant who was a retired soldier obviously with armaments expertise, who was somebody who would be eagerly courted by separatist Punjabi organisations in those days. He was not interested in joining such a group despite threats that were issued to him. Bhagicha Singh himself proved to be little more problem for the claimant because he was killed by the police about a year after this approach. However, other radical Sikhs of the Bittu Group did get in touch with him, they threatened him and under threats he agreed to train some of their fighters. By some means information that he was doing this leaked to the police. He considered the situation in India was far too dangerous for him to remain and in 1990 he left the country going first to Dubai and then to Germany where he put in train a claim for asylum.
4. In 1994 before his claim for asylum had been determined he decided that the situation in the Punjab had changed sufficiently for him to be able to go back in safety. He went back voluntarily. He made a mistake. Very shortly after his return he was arrested. He was mistreated by the police force on his arrest, mistreatment that could amount to torture. He was released after a few days. He was then re-arrested and detained for a period of some 5 months in Jullunder the nearest main city to where he lived. After his detention there he was released again. It appears that at no stage was he prepared to admit that he had acted against the Indian state or had assisted terrorists.
5. Upon his release he returned to his home area. But that was not the end of his difficulties because what thereafter happened was that he was subjected to a cycle of frequent arrests by local police officers who would pick him up and detain him on some pretext or another. They would normally ill-treat him, the ill-treatment would take the form of a beating which sometimes left him unfit for work for a period of a week. A bribe would eventually be paid and he would be released. He decided that this sort of life was intolerable. He had relatives elsewhere in India and he went to stay with them for a period of time. First he went to Bikaner and then he went to Delhi. He did not have any trouble from the authorities in either of these places but his relatives were apprehensive that his presence might bring them into difficulties so they asked him to leave and he left. He concluded that staying in India held no future for him and thus left on a valid Indian passport which he had obtained, arriving in the United Kingdom by air on 19 November 1999 as a visitor.

6. On 23 February 2000 that is some 3 months after his arrival he claimed asylum. As I have already mentioned that claim for asylum was refused on 13 March 2001 and that is the genesis of these proceedings.
7. The questions that arose before the Adjudicator and that arise before us are these. First, if he were to go back to his home area in India would he be persecuted for a Convention or other reason. Second, if the answer to that is yes, is there another part of India to which he could go where he would not be at real risk of persecution or article 3 harm. It seems to us that these are the questions that are decisive of this particular appeal. The facts that we have just recited are the agreed facts of this case.
8. We have been greatly assisted by the background material that has been placed before us. Chronologically the first item in that material is a short statement from Dr Cynthia Mahmood dated 19 July 2001. She is a Senior Fellow at the Institute for International Peace Studies at the University of Notre Dame in Indiana. It appears that she has considerable expert knowledge of Sikh terrorism and its history although she has no personal experience of being in India herself. She considered the status of the Sikh Students Federation which is the formal name of the Bittu Group with which, of course was the group which as far as the authorities are concerned, this claimant would have been associated.
9. At the time she wrote the report which is now is 2 years ago, the position was that Bittu had been arrested by the police 1 year previously (he is still in custody). She went on to say about the group as follows:

“I believe that police and security forces currently trying to mop up the remains of the Khalistan militant organisations are paying special attention to remnants from the Bittu federation. If they could eradicate the last of the group they would be left with just a handful of small groups and radical Sikhs to monitor. I wanted to bring up the peculiar situation of the Bittu Group here because it appears that Manjit Singh’s main link is with this organisation. It is in a slightly different niche right now in light of the mopping up operations of security forces and the police in the Punjab. The human rights situation in Punjab has improved dramatically since the 1990s, disappearances and executions are rare to non-existent, the major risk faced by returned asylum seeker to day is torture which remains ubiquitous.”

She then went on:

“Manjit Singh appears not to have been a high profile militant by any means. On the other hand he seems to have a local

history of abuse which points some sort of record keeping or listing on the part of police. Perhaps the crown will be able to ascertain the probable level of police recognition of Manjit Singh with its further access to this individual and his history. If indeed the crown believes him to be recognisable through police lists, then it is my opinion that he may not be safe anywhere in India, despite the Canadian documents which understate the level of communication of among Indian police, they do have a national computer system to track down suspects across state lines. It is a system that is deeply flawed and people are as likely to slip through the holes as to be caught in its net. Nevertheless it is there.”

9. That report dealt with the situation as Dr Mahmood perceived it to be in 2001. It will be recalled that was a time when there was active pursuit of the Bittu Group or (Sikh Students Federation). The Tribunal has now been assisted by a further report together with an addendum that adds materially to it from Dr Roger Ballard. The Report is dated 1 May 2003 and the addendum 20 May 2003. There is an intermediate note from Dr Ballard that does not materially advance the contentions of either side in this case. Dr Ballard is a considerable expert on the Punjab. He has made numerous visits to that province to conduct ethnographic field work and his profession is that of consultant anthropologist. But he is also very well versed in the recent history of the province and on Sikhs and Sikh politics, and he has published works on these particular topics. He is currently a senior lecturer in applied South Asian Studies at the University of Manchester. His view which is not controversial in the circumstances of this case is that the account given by the claimant is entirely credible and that he received the sort of treatment that one could readily understand happening to somebody who had the misfortune to find himself in the position that he did in the late 1980s.
10. He goes on to deal with what the claimant would be likely to face were he to be returned to the Punjab, or India as a whole. It is the view of Dr Ballard for reasons which he clearly expresses, that as very low level activist on behalf of the Sikh Students Federation and indeed a coerced activist at that, he is not somebody who is likely to be of any interest to the central Indian authorities. Indeed it is the view of Dr Ballard that his treatment is best explained by the fact that local police officers who know about his past have taken the opportunity to extort money from somebody whom they know to be vulnerable. Police corruption is still endemic in India. Officers on low pay operating in a corrupt force would see nothing particularly wrong in attempting to extract money from someone whom they can readily put into the role of victim. To quote Dr Ballard

“In my view Manjit’s tribulations are much better understood as the outcome of a little private enterprise in which some relatively junior police officers had chosen to engage.”

11. He goes on to say at page 5 of his report

“Hence I see no reason to doubt that Manjit’s first arrest by local police officers, his subsequent incarceration in Jullunder as well the numerous subsequent visits of police officers to his home were driven not by so much by the Indian authorities’ politically driven hunt for the few remaining Khalistani activists but rather by the largely successful efforts of poorly paid local police officers to enhance their incomes. It was in these circumstances that Manjit decided that he had had enough, so much so that he decided to take flight once again, although this time to the UK rather than Germany.

12. At paragraph 4.1 of his report Dr Ballard deals with the claimant’s profile as an activist. This of course is a matter already mentioned in the report of Dr Mahmood. He holds as follows:

“I would entirely agree with Mr Davey’s [the Adjudicator] comment that the appellant did not have a high profile as an activist. Indeed there appears to be very little evidence that he was in any way actively involved in the Khalistani insurgency at all-even though he found himself persecuted on the grounds that he was or might have been. In the light of all this I would argue that he was not of any serious interest to the properly constituted authorities, or in other words to senior members of the police or of the various Indian intelligence agencies. On the contrary, all the evidence points to him having been viewed by relatively junior police officers based in the immediate neighbourhood of his village as a convenient target to exploit as a means of adding significantly to their personal incomes.”

and later

“Having carefully considered the available documentation all my experience suggests that Manjit Singh is best regarded as a victim of the collateral damage of the chaotic developments which arose in the aftermath of the attack on the Golden Temple, the assassination of Mrs Gandhi, and the Khalistani insurgency, such that he became a convenient target for a little private enterprise by local police officers. I can also readily confirm that whatever public announcements the Government of India might make, at a local level the properly constituted authorities are largely unable and most usually unwilling to contain such ‘private enterprise’, and most especially so when these activities can be covered up as part of the ‘the fight against terrorism’. Hence I would reach

exactly the same conclusion as Mr Davey with respect to the issue of further persecution if the appellant were now to return to the Punjab – even if I do so by a rather different route. But by the same token if the representative of the SSHD were to argue that conditions in Punjab are now even more peaceful than they were two years ago (a contention which I would certainly not dispute), it does not follow that Manjit Singh would be any less vulnerable to local harassment than he was before.

13. Thus, the position is that Dr Ballard is of the view that the central authorities in India would not be concerned with the claimant, but that local police officers are highly likely to use their local power to attempt to persecute him yet again if he were to return to their area because he can conveniently be so treated.
14. The question of the interest of the authorities was further put to Dr Ballard and he dealt with it in the addendum of 20 May 2003. I shall cite what he has to say about that. He was asked specifically about the Indian authorities and their interest in militant supporters of the Khalistani movement. He said as follows:

“The Indian authorities do indeed take a very close interest in the very small number of militant supporters of the Khalistani movement who still remain actively committed to the cause. Persons who fall into this category who are not in custody in India are now virtually all resident overseas. Whilst Daljit Singh Khalsa (also known as Bittu) is still in custody in India, at least as far as I am aware, I have found no indication that the authorities are still interested in the followers who made up the Sikh Students Federation, the group he once led. The South Asia Terrorism Portal - a semi-official listing of all insurgent movements and their current activities - currently contains no references either to SSF or Bittu.

Those people in whom the authorities regard as still being ‘actively committed to the cause (as defined in the previous para) can indeed expect to be detained if the authorities detect their re-entry into India.

In my view Manjit Singh does not fall into this category – at least as far as the central authorities of India are concerned.

If I am correct in thinking that [the claimant] has not been classified as a militant by one or other of India’s central intelligence services, it is in my view unlikely that he would be stopped at the airport on his return, always provided that his passport is not stamped in such a way as to cause an immigration officer to be instantly suspicious of his *bona fides*.

15. The question that then arises is that if the claimant cannot go back to the Punjab because he will be subject to local persecution if he does, and if the central authorities are not interested in him could he safely relocate anywhere else in India. Dr Ballard does not in terms deal with the issue of safety when covering this particular topic but he considers that the Adjudicator was substantially over-sanguine in estimation of the difficulties that the claimant would face if the option of internal flight were to be pursued. I will quote what Dr Ballard has to say on this topic.

“Firstly India is very much a land of families embedded within communities, rather than a land of individuals. Apart from a small elite of highly qualified professionals at one end of the scale and the virtually destitute at the other, the vast majority of India’s inhabitants find their jobs, their houses, their access to public and private services and indeed their personal security through caste and kinship networks. Those without access to such a network find it extremely difficult to survive, let alone to prosper. This is particularly the case for members of the minority communities such as the Muslims and Sikhs, who are always in danger of being viewed as potential terrorists – particularly if, as in this case, they have spent some time overseas in search of asylum. Hence whilst Mr Davey is quite right to note that Sikhs are free to travel to all parts of India, and that there is no nationally effective surveillance system – even for those persons who, unlike the appellant are of interest to the authorities. The most likely source of difficulties – and indeed of persecution – as far as the appellant and his family are concerned are firstly the lack of any of the local links which they would need to rebuild their lives were they to settle elsewhere in India, and secondly the extent to which he would be likely to find himself even more exposed to the kind of opportunistic persecution which he has encountered in Punjab if he was indeed to pursue the option of internal flight.”

16. He then went on to disagree strongly with the Adjudicator’s finding that the claimant would have no difficulty in making a new life for himself and his family elsewhere in India.
17. We agree with Dr Ballard that in the light of what we now have before us the Adjudicator was too sanguine. There would plainly be considerable difficulties faced by someone in the claimant’s position moving from the only area in India where he has ever lived for any length of time to a part of India to where he would perhaps not speak the language and certainly would not have ready access to employment. But that of course is not the question that we have to deal with. We have to assess whether there is a part of India to which he could go where he would not be at real risk of persecution for a Convention or Article 3 reason. It should be borne in mind

that if he were to go elsewhere in India he would not be registered by the central authorities or indeed the local authorities as being someone with any sort of terrorist or quasi-terrorist past, he would simply be arriving as a Sikh from another part of the country. The question that must be asked therefore is whether a person in such a position would be at real risk of persecution.

18. First of all, might the authorities find out about his past. It was submitted to us that there would always be a danger that that would happen. We accept that one could not entirely eliminate the risk that such a thing might happen but we cannot see that there would be a real risk that it would for he would not volunteer what his past association with the Bittu Group was as he would have no reason whatever to do so and it would be an unwise thing for him to do. We have no reason to suppose that he is an unwise man. This would be a matter about his past which he would wish to be discreet about. We do not consider that that imposed reticence would place an intolerable burden of hardship upon him.

19. That being the case one then turns to what the position is as far as internal relocation for Sikhs is concerned in India. This is covered in addition to what we have already set out in paragraphs 6.117 to 6.120 of the CIPU report on India for April 2003. The main findings are as follows:

“ 6.118. “Some 4 million Sikhs live in India outside the Punjab. Sikh communities are found in most Indian cities and virtually all states. They are general urban and prosperous and they control important trades and occupy a prominent position within the central and regional administration. Most Sikhs, particularly the better educated and urban Sikhs, have some knowledge of English and or Hindi. Punjabi Sikhs would have no more problem in enrolling their children in school or obtaining employment than any other Indian relocating to a new area.

6.119. There are no checks on a newcomer to any part of India arriving from another part of India even if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens and often people have no identity cards, which in any event can be easily forged.

6.120. The Director of the South Asian Human Rights documentation Centre believed [this was in the year 2000] that a high profile person would not be able to

move elsewhere in India without being traced but that this would be possible for low profile people. Sources from foreign diplomatic missions in India considered that there was no reason to believe that someone who has or has had problems in the Punjab would not be able to reside elsewhere in India. Reference was made to the effect that the authorities in Delhi are not informed about those wanted in Punjab.”

18. It seems to us that when one takes all the background material that has been placed before us and puts it together, the position is that the claimant would undoubtedly face difficulties were he to be compelled to relocate for his own safety to another part of India. These difficulties would be part linguistic, and they would be in part because he would be in a minority group wherever he would be likely to go and in part they would be because he does not have the family structures or relationships that might tie him to other Sikhs already resident in the areas to which he would go. He would thus be placed at a genuine disadvantage perhaps even a serious disadvantage when it came to the question of looking for work or finding suitable accommodation for himself and his family. It is very likely that life will be hard for him in the short term and we would not wish to under estimate the difficulties that he would face. But we have to consider whether the hardship that relocation would involve would be undue; that is hardship not quite but almost approaching destitution. As has been held in many of the decided cases on the topic it is not sufficient to constitute undue hardship that a person does not speak the language or has no family or has no employment where he is going. The level to which he has to be reduced before undue hardship can be successfully claimed would be considerably beneath that and we can see no evidence despite what is said by Dr Ballard in this case that that is the sort of level of hardship to which this claimant would be subjected were he to relocate to a different part of India. Difficulties yes, considerable difficulties quite probably, but undue hardship we feel not. The threshold for undue hardship is set very high and deliberately so. We do not feel that there is any evidence in this case that it would be crossed if this claimant were to be relocated.

19. For these reasons, we consider that this appeal must be dismissed.

**Ainley**

**His Honour Judge N  
Vice President**