

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70394/96

D S M

AT AUCKLAND

Before: P Millar (Chairperson)
A Wang Heed (UNHCR Member)

Representative for the Appellant: Mr Ujagar Singh

Representative for NZIS: No Appearance

Date of Hearing: 23 April 1997

Date of Decision: 18 September 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, an Indian national of the Sikh faith.

THE APPELLANT'S CASE

The appellant is a 58 year-old married man from P village, R district, the Punjab. He arrived by himself in New Zealand on 6 April 1995, and he applied for refugee status on 30 May 1995. His application was declined by the RSB on 15 January 1997.

The appellant's family consists of his wife, their two sons, his mother, two brothers and one sister. The appellant was married in 1954 and his wife is 50 years old and their two sons are 12 and 10 years old respectively. The appellant's brothers are both married and live in a house in P village, along with the appellant's wife and his two sons. The appellant's sister is married and lives in a village with her family, 14-15 kilometres away. The appellant's village consists of approximately

400 houses and the nearest city is M, with a population of 100,000 people. P is 20-25 kilometres away from Chandigarh and is 45 minutes from that city by bus.

The appellant's family own a 20-25 acre farm which is one kilometre from the village. When the appellant's father died, the land was divided between the three sons and the appellant owns eight acres and his two brothers own the rest. Overall, the family is reasonably well-off, receiving an income from the land and from three trucks owned by the appellant. The family home has electricity. The family does not have a telephone, but one year ago, they purchased a television set.

Initially the appellant worked as a farmer then, in 1981, he purchased a truck and commenced a transport business. By 1984 the appellant owned three trucks and three years later he was earning Rs17-18,000 per month. By 1994, his monthly income was Rs50,000. When asked if he was well-off, he stated that "time was passing well", and there was "no shortage of anything".

In 1987, the appellant was elected to be the full-time secretary of the Truck Operators' Union for the M city area. The appellant was elected to this position as he owned three trucks and he was educated and responsible, as well as having contacts within the business community. The union was formed by truck owners in 1947 and by 1987 it had 150 members. The appellant's duties as secretary were to keep good relations with members of the business community and obtain business for union members by offering transport services to traders for their goods. As secretary, he would also be approached by customers for the provision of transport services.

In terms of his political life, on passing Class 10 at school, the appellant became a supporter of the Akali Dal Party and on 10 December 1993, the appellant was appointed circle leader for the Akali Dal (Mann) Party (referred to in this decision as "the Mann party"). The appellant explained that President Mann is the leader of the Party which covers 18 to 19 districts each having a district leader. Within each district there are two or three circles (apparently sub districts) each circle having a leader.

The appellant was appointed leader of the M circle which was one of five circles in R district. M circle contained 70 villages and, in total, about 35-40,000 Sikhs. There were 200-250 active members in M circle and a committee was formed from

those members. The committee members had links with the villages and, at the appropriate times, would contact other members and organise support.

The appointment of a circle leader was the sole decision of the president and the person appointed would be someone whom the president believed was putting his or her "heart and soul" into the party. The appellant believes he was chosen because he had given donations to the party, as well as provided vehicles for transporting people to party rallies and activities. Whenever there was a conference of the party, the appellant would put forward his views for a separate Sikh state.

As circle leader, the appellant's duties were to provide reports to the district leader on matters regarding the appellant's circle. Any orders from the president of the party would go to the district leader, who would then pass those on to the appellant, and it was his duty to then inform villagers and convey any messages to the people. The appellant's duties were also to organise payments and follow orders from the president as to when rallies would be held and organise vehicles to transport people to the rallies.

The appellant, from the time he was appointed circle leader until leaving India in 1995, spoke at least 15-20 times at party rallies. Occasionally, he would be speaking before a crowd of 5-10,000 people and also to smaller crowds. The appellant also made speeches at religious festivals where, once scripture readings had been completed, participants would gather together and express their views. When making speeches or talks, the appellant would express his views about the religious rights of the Sikhs and their demands for an independent state, as well as how to achieve an independent state in a peaceful manner.

On 24 January 1994, the appellant was arrested by local police at the Mann party offices in M city and detained at R city police station. This was the first time the appellant had ever been arrested. The appellant was accused of telling members of his party to disrupt proceedings at a Congress Party rally to celebrate Republic Day and which was to be held in R city, twenty kilometres away, on 26 January 1994. The appellant was accused of helping terrorists and inciting people to demand Khalistan. While these accusations were made the police did not produce evidence that the appellant had requested Mann party members to disrupt proceedings and he denied the allegations. The officers said that "this worm inside him" relating to Khalistan, "had to be taken out".

After arriving at the police station, the appellant was made to sit outside on a veranda for one and a half hours. The officers then put him on the ground and hit him on the soles of his feet with a stick that was two and a half feet long. The appellant was beaten by four constables as one inspector stood by and watched. The appellant was then made to sit on a chair and two constables took a wooden roller, two to two and a half feet long, 35-45 kilograms in weight and applied it to his thigh bones. The appellant explained that sometimes while the roller was applied to his thighs, he could not sit anymore and he would fall down and, while lying down, was then kicked. After the roller was applied, the appellant was then made to lie face down on the ground, his legs were folded back, lifted up and he was then kicked in the back by two police officers, while the others stood around and watched. The appellant said the kicking lasted for 10-20 minutes. On the first day of his detention, these beatings occurred two or three times. The appellant was detained five days and was beaten every day. Whenever someone came in drunk, he would be taken out "like a butcher-house". Each day the roller was applied once or twice and, two or three times each day, he would be made to lie down on the floor and kicked as he had described.

The appellant was released on 28 January 1994 and his release came about through representations made on his behalf by the president of the union. On release, the appellant was unable to walk without assistance and had to be helped out of the station. He was "half-dead" and said his back troubled him very much from that time onwards. His skin was torn on the lower back on both sides; his legs were numb; and he maintains he still cannot walk properly to the present day. It was not until 15-20 days after his release that the appellant could walk without assistance. Following his release, the appellant saw a doctor at a private mehta clinic, who gave him an injection for the pain in his back and also tablets for pain in his body. The appellant continued to see the doctor every 10-15 days after his release, who would check him and change medicine, "whatever he felt was right". The appellant also complained that his urinary system was also affected as a result of the injury to his back.

About ten to twenty days after his release, the appellant returned to his office which was five kilometres from his house and was taken there by vehicle. The appellant could not work full time and some days only worked four to five hours, depending on what he felt he was able to do. This was because of the injuries to his back and the nerves in his thighs having gone numb.

On 31 May 1994, the appellant was arrested at his home at 8pm. The appellant was arrested and detained on this occasion due to the upcoming commemorative activities held by the Akali Dal parties in memory of the storming of the Golden Temple in Amritsar on 4 June 1984. In view of that event, the party had named the first week of June, Holocaust Week. The government banned commemoration of this nature, as it accused the Akali Dal of inciting people to protest. After being arrested the police asked the appellant why he wanted Khalistan and why he was inciting people. The appellant explained that each of his arrests, as related above and below, were carried out mainly for the purpose of keeping him in custody at politically sensitive times. The appellant was beaten every day, the same way as before, at least once a day, and the beatings lasted 15-20 minutes. However the appellant claimed that on this occasion a disc in his back had been moved as a result of the beatings to his back. The appellant was released on 9 June 1994, following a visit to the police station by the president of the union, as well as the office bearers of the union, such as the secretary and treasurer. Some Mann party members also attended. While a bribe was not paid the appellant believes that the president of the union agreed to provide police officers with certain goods or transport services in exchange for the appellant's release.

On release, once again the appellant could not walk out of the station without assistance. He was then put in a vehicle and taken to the doctor at the private mehta clinic. The appellant was given an injection for his spinal cord and x-rays were taken, showing that he had a dislocated disc in the area where the "backbone starts on the hips". The skin was torn in this area as well. The appellant was given tablets to take and was told to exercise by walking around, lying on his back and lifting up his legs.

The appellant convalesced for one month and then returned to his work on a reduced basis. The appellant also attended the party offices every second or third day if there was work there that needed to be done.

On 14 August 1994, the appellant was again arrested at 10am from the Mann party offices and was taken to R police station by six to seven police officers. On this occasion, the appellant was arrested and detained for allegedly enticing young boys to throw bombs and disrupt the upcoming Independence Day celebrations, allegations denied by the appellant. The officers asked the appellant the same questions over and over, looking at him as though he was "an enemy" and saying

that “all that could happen was due to him”. He was beaten by four officers who hit and punched him, slapped him on the face and punched him in the ribs, just beneath his underarm. He was hit with sticks on the soles of his feet and on his stomach. The roller was not applied on this occasion. The appellant was kicked in the back, but not as much as on previous occasions. The appellant was also pulled by the hair and pulled by the beard, which he described as “an extreme act”. These beatings occurred every day, roughly once each day. The appellant was released on 19 August 1994 following the visit to the police station by the president of the union, as well as one or two people from the union office and also one or two from the village Panchayat. However the release was obtained without any bribe being paid or any arrangement being made for the provision of goods or services. While the appellant was not beaten as badly on this occasion, he still needed support to walk out of the station and was taken to a clinic where he was checked by a doctor who gave him tablets and ointments.

The appellant remained at home for 10-20 days resting and then returned to work, but, once again, on a reduced basis. The appellant would simply sit, supervise things and would leave the office if he had too much problem with his back, as he was not able to sit for long periods.

On 22 December 1994, a religious conference took place, organised by the appellant and others, for the M circle. There were 2,400-2,500 people in attendance at the conference and these people came from 70 villages in the circle. The appellant made a speech at the conference, saying that there should be a separate Khalistan state. He further said:

“There should be separate rivers to keep Khalistan resources for the Punjab; people should not take part in violence, but put forward claims for a separate state to the government...Our language is Punjabi and the Punjabi-speaking areas should get together and there should be a state in which the Sikh people could move around.”

Three days later, the appellant was arrested at home in the evening, by seven to eight armed police officers. He was taken to R police station and was detained for one month. On this occasion, he was told to refrain from making pro-Khalistani speeches as he was “trying to break the country into pieces”. While in detention, a constable from the police station of the appellant’s village told him that the police planned to kill him. The appellant gave the constable a message for the appellant’s family in which he requested that they obtain his release and the constable secretly took this to the family. The constable agreed to do this, as the

appellant knew him from his village and "one villager would help another and they would do it for God". The appellant's release was obtained by payment of a Rs35,000 bribe, following the attendance of the president of the union, the village Sarpanch, the appellant's brother, other Panchayat elders and union people. The appellant believes that if these people had not attended, he would not have lived. While detained, the appellant was beaten every day, sometimes during the day, sometimes at night, and sometimes once or twice per day, depending on the officers. The appellant was beaten on the soles of his feet, thrown down on the floor and kicked in the back. The roller was applied to his legs whenever the officers felt like it. Upon his release, the inspector told him to stop his ideas on Khalistan or he would be "sent to Khalistan".

The appellant needed assistance to walk out of the station and he was taken straight to a clinic, where he received an injection and was told to do the exercises as previously recommended to him. The appellant had the same injuries as before, but they were worse due to the beatings he had received, and he was in great pain. The appellant rested at home for 15-20 days and, in that time, could only walk around a little bit. From the time of his release, he went to the clinic every 10-15 days, gradually got better and would go once a month. After the 15-20 days' convalescence, the appellant then went into hiding, staying with relatives, moving not further than 50 miles from his home. A few times he returned home and learnt that in the two to three months' period he stayed with relatives, his family were visited by the police, who said that the appellant was not to go to celebrations. The police visited once per month or 20 days and had threatened to burn the family house.

Following his release in January 1994, on the first occasion he was arrested, the appellant decided he wanted to leave India and he gradually took steps to do so, applying for a passport in August 1994. The appellant engaged the services of an agent to obtain the passport and he received a passport on 25 November 1994. From January 1994, contact was made with a girl from the appellant's village who was living in New Zealand, and this person had been requested by her family to organise sponsorship for the appellant. This was finally obtained in January 1995, and the appellant finally obtained a visa for New Zealand in March that year. The appellant left India on 5 April 1995. The appellant did not leave earlier than that time, as he needed to make arrangements for someone to take over his business. Finally, the appellant was able to place one of his brothers in charge and made an

agreement in writing with that person, to do so. At the present time, the business has an income of Rs15,000 per month.

The appellant has not been told by his family whether a warrant for his arrest is in existence, nor has any union member told him of this. The appellant was never formally charged or taken to court.

The appellant was not deterred from carrying on political activities throughout the period of his four arrests, as he believed that "the truth must come out about the Sikh cause". The appellant claimed that his political views would not change, and if he had relocated to another part of India, he would still feel that Sikhs were not getting their rights and he would wish to talk about that with other Sikhs and ask for his rights. Furthermore, he would be identified as a Sikh and would be likely, for all of those reasons, to come into conflict with the police, who would then check his record with R police, leading to his imprisonment.

The previous circle leader was arrested the same way as the appellant had been arrested. The district leader had also been arrested, but the appellant could not say how many times.

The appellant stated that he had never had back problems prior to his first arrest. While in New Zealand, he visits the doctor once every 20 days or one month, receives medicine and has to take pain-killers as well. The appellant provided the RSB with a copy of a certificate, dated 26 May 1995, from Dr R P Agnohotri, family physician. The doctor states:

"This is to certify that I have examined [the appellant]. He gives an account of assault by the police in India in June 1994. He complains of claudication and parasthesis in both legs after that incident. Clinically he has bilateral sciatica with neurogenic claudication. He will need further x-rays and CT scans and also an orthopaedic opinion to assess the extent of his medical problem.

He is being treated with analgesics and anti-inflammatory drugs in the meantime."

The appellant, at the appeal hearing, provided the Authority with a further certificate, dated 20 April 1997, from Dr Agnohotri, in which he states:

"This is to certify that I have examined [the appellant]. He gives a history of assault by the police in India in June 1994. He complained of numbness in both legs and x-rays done at that time showed damage to disc. He has pain and numbness on walking on both sides of his legs.

Further investigations were not done due to financial hardship by the patient. He is however being treated with analgesics and NSAID in the meantime.

He attended Auckland Hospital for his anorectal and prostate problem. He is still under their care."

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 Re RS (17 March 1995) requires two additional issues to be addressed:

- (a) Can the appellant genuinely access domestic protection which is meaningful?
- (b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

ASSESSMENT OF THE APPELLANT'S CASE

Before the Convention criteria can be addressed, an assessment must be made of the appellant's credibility.

The Authority closely observed the appellant throughout the course of the hearing and found him to be a forthright person, giving clear answers to our questions and impressing us as being someone with strong political convictions. Accordingly, we have no reason to doubt that the appellant had the political profile as claimed. Furthermore, we have no reason to doubt, given the appellant's personality and his political convictions, that he would be someone who would come into conflict with the police and a person who, on festival days or at sensitive times, would receive police attention. In view of the strength of the appellant's convictions, we accept that, even though beaten after being arrested, he was still willing to continue with his role as circle leader. Generally, the appellant's evidence has been given consistently throughout the refugee determination procedure and we have no reason to doubt his claims. Overall, we find him to be a truthful witness.

As the appellant stated that he wanted to leave India after his first arrest, the Authority queried why the appellant did not leave India earlier than he did. However, this was not a case of an asylum seeker fleeing the country because he or she is actively pursued by the police in relation to some particular incident and where an arrest warrant has been issued in the asylum seeker's name. The Authority accepts that the appellant's decision and impetus to leave India was made over the period of time within which he was arrested and harassed by police who wished to detain him at politically sensitive times. The Authority accepts that, in the end, the appellant realised that in view of his character and convictions he would always be likely to come into conflict with the authorities and therefore chose to leave India when he did, the necessary arrangements having been finalised at that time.

The Authority had doubts as to whether the appellant was detained for one month at the end of 1994. Given that all other periods of detention were brief, this longer period was out of keeping. The appellant explained that this lengthy period was to force him to change his views and also, on 27 December, there was a religious festival and the police wished to keep him in custody as they were afraid that he would attend and give a political speech. He further put forward the explanation that he was to be kept to allow time for the police to kill him.

The Authority is of the view that the appellant has embellished this last period of detention and that it was more likely that he was detained for five or six days, as he had been on previous occasions. The sponsorship form of 16 January 1995 also leads the Authority to the view that the appellant was not detained at that

time, and was more likely liaising with the sponsor's family and the sponsor herself, to have sponsorship papers compiled and lodged.

Once again, in view of his overall credibility, the Authority does not penalise the appellant for this slight embellishment but finds that this last period of detention was of similar duration to previous arrests.

The appellant's account is consistent with country information. According to a Response dated 25 July 1989 produced by the Immigration and Refugee Board, Canada, the Shiromani Akali Dal Party was founded in 1920 and from that time, factions formed and broke away. In 1987, two factions formed the Unified Akali Dal, under the leadership of Simranjit Singh Mann, but this merger was unsuccessful and the remnants of the Akali Dal are now the Mann party led by the abovenamed and the other being the Akali Dal (Badal) led by Prakash Singh Badal.

Both parties are legal political parties in India and the Badal faction convincingly won the provincial elections in February this year (*India Today*, February 28, 1997)

In a response dated 22 May 1996, the DIRB made the following statements about the leader of the Mann party:

"All of the Akali Dal factions, except one, are united under the leadership of Prakash Singh Badal, the leader of the Akali Dal (Badal) faction ... the one exception is the Akali Dal (Mann) which is led by Simranjit Mann. According to *India Today*, Mann, the leader of the "secessionist faction" represents the "radical brand of politics ... of the Akali spectrum", and his "stance strikes a chord among a section of the Sikhs who still nurse a feeling of grievance - perceived as genuine - against the government." According to *India Today*, Badal rejected Mann's offer of unity because of the latter's radicalism ..."

In a further response, dated 12 August 1996, the DIRB states:

"The political appeal of the Akali Dal faction (Mann) is greater at the grassroots level (mainly at the local and district level, and to some extent at the provincial level) than at the national level. The Akali Dal (Mann) is seen as the most outspoken of Akali Dal factions and its leading members have been harassed by the authorities."

Country information available to the Authority indicates that the leaders of Akali Dal factions, along with activists, have been arrested and harassed by the authorities in the past. According to the response dated 25 July 1989, referred to above, the following comments were made:

“On 11 May 1987, the Central Government brought in approximately 70,000 paramilitary personnel for [a] massive security operation, and by 30 May, the government had arrested at least 450 suspected Sikh militants. ... Akali Dal political activists and even Akali Dal leaders have been arrested, in addition to other suspected Sikh militants.”

In a response dated 11 August 1995, the DIRB, notes that, as a consequence of the 1 November 1993 Akali Dal protest march to Delhi, which was banned by the Punjab government, Akali Dal leaders and supporters were detained while others went underground to escape arrest.

In view of the information referred to above, while the Mann party is a legal political party and, while Sikh militancy may have been eliminated in recent times, the Authority can still accept, on the occasions referred to by the appellant, being as they were politically sensitive, with his strong character and his role in what is the more radical arm of the Akali Dal, that he would be arrested and kept in custody as a means of the police controlling public order and the situation in that area generally.

ISSUE 1

The appellant's evidence was that while he was in hiding, the police visited the family home looking for him. However, it would appear that no warrants have been issued for the appellant's arrest, nor has he been charged or convicted of any offence. Furthermore, no evidence was put before the Authority of further police interest in the appellant beyond the visits to the family home while the appellant was in hiding.

The Authority notes that the appellant's difficulties with the police commenced with his promotion to the position of circle leader for the party and he was detained during politically sensitive occasions and released shortly thereafter indicating that the appellant was only of interest to the police at those times and while he was not in India or in the locality there was no reason for the police to be concerned with him. It is the Authority's view that, in view of the strength of the appellant's convictions and his forthright character, if he were to return to his village, he would continue to be heavily involved in the Mann party. Even if he were not to resume his position as circle leader, as he already has a record of detention with the local police, the Authority is willing to accept that his continued involvement alone could lead to a recurrence of the pattern of arrests which he suffered from January 1994.

In view of those matters, the Authority concludes that there is a real chance that the appellant will be subjected to the severe mistreatment that he suffered in India. Such mistreatment, in the Authority's view, amounts to persecution.

ISSUE 2

Clearly any past or further persecution of the appellant in India is based on his political opinions and also adverse political opinions imputed to him by the Indian police, who perceive him to be a supporter of terrorism.

RELOCATION

Genuine access to domestic protection

The appellant did not produce any evidence that he was currently being sought by his local police or, in particular, that there was an arrest warrant in existence for him. For those reasons, the Authority does not accept the appellant would be pursued by Punjabi police in other parts of India. The Authority did not have before it any country information to suggest that, if he were to relocate to another part of India, he would be arrested or troubled by authorities in those areas for continuing his involvement in the Akali Dal party. Accordingly, the Authority finds that the appellant could genuinely access domestic protection which is meaningful if he were to relocate to another part of India.

Reasonableness

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1994) defines torture as (inter alia):

“... any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him ... a confession ... when pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ...”

In the Authority's opinion the treatment suffered by the appellant can properly be described as torture.

In the report "Amnesty International and India" (March 1996), Amnesty International reported on the pattern of human rights violations in India, along the following lines:

Torture of detainees in police and military custody remains endemic, often in an effort to extract confessions or information. The most common method of torture is beatings with lathis (canes). Other methods include suspension by the wrists and ankles and electric shocks...

There is widespread scope for the abuse of power within the confines of police stations in India. As acknowledged by successive National Police Commissions within India resort to torture and other forms of cruel, inhuman and degrading treatment is encouraged by many factors. These include: the lack of investigatory machinery available to police; pressure on police to mete out instant punishment because of the inability of the criminal justice system to deliver justice promptly and effectively; corruption; poor wages. The sense of impunity generated by the infrequency with which police officials have been held publicly accountable for their actions, the rare convictions of those responsible for rapes or deaths in custody, and the length of legal proceedings, further encourages the perception that resort to torture is acceptable.

Police are given wide powers under a variety of legislation which allows them to arrest, detain and investigate. Detainees can be kept in police custody for long periods, particularly under legislation permitting preventive detention, during which they are at risk of torture and ill treatment. In violation of Indian law and police procedure the practice of unrecorded police detentions is common and there is little doubt that it facilitates police abuse such as beatings and other forms of ill treatment and torture, such as rape. Moreover, lawyers and relatives are routinely denied access by the police to people held in custody. Most torture and ill treatment in India occurs during the first stage of detention in police custody when access to outsiders is routinely denied. Indian law is virtually silent on the procedures for questioning suspects in police custody, and no provisions exist detailing safeguards in the Code of Criminal Procedure."

The United States Department of State in its Country Report on Human Rights Practices for 1996 relating to India also referred to "credible evidence" that torture is common throughout India and the authorities often use torture during investigations.

The Authority in its decision on the relocation of torture victims (Refugee Appeal No. 135/92 Re RS (18 June 1993) (at page 13)) stated:

"Where an individual has suffered torture at the hands of the state agent of persecution, special considerations come into play when considering the issue of relocation."

"... Such approach, flows from our desire to give meaningful recognition to the cardinal importance of the universal right to be free from torture." (page 17)

For the reasons set out below, the Authority is satisfied that it is unreasonable to expect the appellant to relocate.

This Authority, in Refugee Appeal No 135/92 Re RS (18 June 1993), set out a list of factors, by way of general summary only, that are to be considered when determining the issue as to reasonableness of relocation. In the Authority's view, in this particular case, the following factors are relevant to the assessment of reasonableness of relocation for this appellant.

1. The torture suffered by the appellant was an acute violation of his human rights, norms and international law and principles. (For further discussion, see Refugee Appeal No 135/92 Re RS (18 June 1993) at page 27).
2. As illustrated by the country information referred to above, torture during police detention remains common in India.
3. The degree of severity of the torture and the number of times it was inflicted must be assessed. Only relatively recently, and on four separate occasions, the appellant, an elderly man, has suffered episodes of severe and brutal mistreatment which could fairly be described as torture. In that sense, it could be properly said that the appellant has suffered a sustained and systemic violation of basic human rights demonstrative of a failure of state protection (from "The Law of Refugee Status" by Professor J C Hathaway (1991) at pages 104-105).
4. Another relevant factor is whether the appellant continues to suffer physical and related disabilities as a result of the torture. The appellant complains of an injury to his lower back causing numbness in his legs and leaving him with, as it appeared to the Authority, a noticeable difficulty in walking. The appellant has lived with his injury for some three years and the doctor's reports provided show that the disc in his lower back has been damaged. There is no reason for this Authority not to accept the appellant's claim that the injury has been caused by the beatings received from the police.

The Authority is well aware of cases involving the relocation of torture victims in which appellants have been left with a disturbed mental state such as a post traumatic stress disorder. The appellant in the present case did not appear to the Authority to be labouring under any apparent psychological disability of the nature referred to. The Authority however notes that the Authority in Refugee Appeal No 135/92 did not state that in assessing reasonableness of relocation an appellant

must suffer some form of mental disability as a result of the torture. Such a disability was listed in Refugee Appeal No 135/92 as one factor among a number of factors to be considered in deciding the issue of reasonableness. While the appellant did not appear to suffer from such a disability the Authority is mindful of his strong character and the likelihood of him being a person who keeps his emotions inside and who, therefore, would not reveal any mental trauma he may have endured as a result of the way he was treated by police in India. So far as there could be said to be any doubt on the question of reasonableness, in view of the appellant not appearing to suffer some psychological disability as a result of the torture, in our view, as stated in Refugee Appeal No 135/92, if a decision-maker is unsure as to whether relocation is reasonable, the appellant must receive the benefit of the doubt. Again, further in that decision, the Authority stated that:

“We must emphasise again that if there is doubt, either as to the issue of protection or as to the issue of reasonableness, the appellant must receive the benefit of the doubt with the finding that relocation is not available.”

It is the Authority's opinion that, in this case, while the appellant does not appear to suffer from any apparent psychological condition from the torture, but rather the continuing physical injury to his back, if there is any doubt as to the reasonableness of relocation, in accordance with the jurisprudence of this Authority, the appellant is given the benefit of the doubt.

CONCLUSION

The Authority concludes as follows:

1. Objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to his village in India.
2. There is a Convention reason for that persecution, being his political opinion and adverse political opinions imputed to the appellant by the authorities.
3. It is unreasonable to expect the appellant to relocate to another part of India.

For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....
Chairperson