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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 652/88
T.A. No.

198 8

DATE OF DECISION 16.6.1988

Shri Chandra Prakash

Petitioner

Shri Frank Anthony

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S. P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No

S. P. Mukerji
(S. P. Mukerji)
Administrative Member

P. K. Kartha
(P. K. Kartha)
Vice-Chairman (Judl.)

(3)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-652/88

Date: 16.6.1988

Shri Chandra Prakash Applicant

Versus

Union of India & Others Respondents

For the Applicant Shri Frank Anthony, Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member,

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman (Judl.))

Shri Chandra Prakash, who is presently posted as the Deputy Commissioner of Police, Anti-Corruption Branch of Delhi Administration, has filed this application against the Union of India represented by the Ministry of Home Affairs, the Lt. Governor, Delhi Administration, Shri Ved Marwah, the then Commissioner of Police, Delhi, Justice Ranganath Misra Commission of Inquiry (through Union of India), Justice D.K. Kapur Committee, and Justice M.L. Jain Committee, seeking the following reliefs:-

(a) The report of Justice Ranganath Misra Committee insofar as it refers/relates to the applicant, be quashed. Alternatively, the respondents be directed not to consider/rely upon/act upon the said report, in any manner whatsoever insofar as the applicant is concerned.

(b) Respondents 1 and 2 (i.e., the Union of India and Lt. Governor, Delhi) be directed to notify the appointment of respondents 5 and 6 (i.e.,

Justice D.K. Kapur Committee and Justice M.L. Jain Committee) under Section 11 of the Commissions of Inquiry Act, 1952 and also issue notification under Section 5 of the said Act conferring on the Committee additional powers contained in this Section, with immediate effect.

(c) The respondents be directed not to prepare/publish or consider/rely upon/act upon any report by/of Justice D.K. Kapur Committee or Justice M.L. Jain Committee in any manner whatsoever till the right of hearing is granted to the applicant under the Commissions of Inquiry Act, 1952.

2. The applicant, who is an I.P.S. Officer, allotted to Union Territories Cadre, was posted as Deputy Commissioner of Police, South District, Delhi, during the period when communal riots on a large-scale broke out in Delhi in the wake of assassination of the late Prime Minister of India, Smt. Indira Gandhi, on 31st October, 1984. Following the riots, certain enquiries have been ordered to be conducted which the applicant has impugned in the present proceedings before us.

3. Shri S.S. Jog, the then Commissioner of Police, Delhi appointed Shri Ved Marwah, the then Additional Commissioner of Police (C.I.D.) as an Inquiry Officer to make an inquiry into the alleged administrative failure of the Police in controlling the riots and to point out cases of serious lapses and negligence on the part of the individual officer and to submit his report to him. Shri Ved Marwah has not

yet prepared his report for submission to the Government. The applicant and one of his colleagues filed a suit in the Delhi High Court and Mr. Justice M.K. Chawla J. vide his judgement dated 25.11.1985, passed an ad interim order of injunction restraining defendants No.1 and 2 (Shri Ved Marwah and Shri S.S. Jog) from publishing the impugned inquiry report or submitting the same to the Government. The learned Judge also took note of the fact that at that stage Justice Ranganath Misra, a serving Judge of the Supreme Court, had already been appointed as the Commissioner to enquire about the circumstances under which the riots took place. The said Commission was holding the quasi-judicial proceedings and its report was likely to be published within a short period. In the circumstances, the learned Judge observed that he was of the opinion that "in case the inquiry report of Shri Ved Marwah, def. No.1, is allowed to be published, the reputation and career of the plaintiffs will be seriously damaged. The documents filed on record do indicate the names of the plaintiffs against whom disciplinary action is contemplated."

4. It appears that no appeal was filed against the aforesaid order by the Government of India or Delhi Administration, or by Shri Ved Marwah.

5. On 26.4.1985, the Central Government appointed a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 to inquire into the allegations in regard to the incidents of organised violence which took place in Delhi following the assassination of the late Prime Minister, Smt. Indira Gandhi, and recommend measures which may be adopted for the prevention of recurrence of such incidents. The Commission was headed by Justice Ranganath Misra, a serving Judge of the Supreme Court.

6. Justice Ranganath Misra Commission submitted its report to the Government on 23rd February, 1987. Justice Misra Commission's Report refers to the suit filed by the applicant and his colleague in the Delhi High Court mentioned above and the order of injunction passed by the learned Judge. The report also mentioned that no further steps appeared to have been taken by the Administration to get vacated ^Q this injunction or varied. A lot of criticism had been advanced in the written arguments before the Commission. In this context, the Commission has observed as follows:-

"The criticism seems to be justified but with that part of the matter the Commission has indeed no further concern in view of the fact that elsewhere in this report, the Commission intends another inquiry to be conducted."

7. Nevertheless, the Commission has made the following observations pertaining to the conduct of the Deputy Commissioners of Police who had moved the Delhi High Court:-

"What is relevant for the purpose of this report is that two of the Deputy Commissioners of Police were apprehensive that there was likelihood of materials coming out against them if Shri Marwah proceeded with the inquiry and, therefore, they were anxious to rush to the court and obtain an order of interim injunction. The inquiry, as the Commission gathers, was not proceeding for other reasons even before the injunction from the High Court came, but if the injunction had not been there, quite likely some sort of inquiry could have been carried on in view of the fact that Shri Marwah had by then become Commissioner of Police and appeared to be in favour of an inquiry of this type. The tell tale circumstance, which the Commission is prepared to gather from the conduct of these two Deputy Commissioners of Police, is that they were afraid of facing the inquiry."

8. On 23rd February, 1987, the Delhi Administration issued two orders appointing two Committees with separate terms of reference. One Committee consisted of Justice Dalip K. Kapur, former Chief Justice of Delhi High Court,

and Kumari Kusum Lata Mittal, retired Secretary to the Government of India, to inquire into delinquency of individual Police Officers and men with respect to the riots and also good conduct of individual Police Officers and men and recommend such action as may be called for. The second Committee consisted of Justice M.L. Jain, a former Judge of the Delhi High Court and Shri R.N. Renison, a retired I.P.S. Officer, with the following terms of reference:-

- (a) To examine whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of riots from 31.10.84 to 7.11.1984;
- (b) To recommend the registration of cases, where necessary, and to monitor the investigation thereof;
- (c) To monitor the conduct of the investigation and the follow up of cases already registered by the Police and to suggest steps for effective action including fresh and further investigation, where necessary.

9. The application came up for admission before us when Shri Frank Anthony, Senior Advocate, appeared for the applicant. Respondent No.1 was represented by Smt. Raj Kumari Chopra, Advocate, and respondents 2-6 by Smt. Avnish Ahlawat, Advocate. In the reply of respondents 1-6, the following contentions have been raised:-

- (i) The Tribunal has no jurisdiction to adjudicate the matters dealt with in the application and grant reliefs prayed for. No dispute relating to service matters as defined under Section 3 read with Section 14 of the Administrative Tribunals Act, is involved in the present application.

(ii) There is no order adversely affecting the applicant against which he can raise any dispute before the Tribunal under Section 19 of the Administrative Tribunals Act.

(iii) The Tribunal has no jurisdiction to comment on or stop the working of the Fact Finding Commissions which have been appointed to inquire into matters relating to the October/November, 1984 riots. These inquiries are not against one particular individual. These inquiries were only with a view to finding out as to who all were involved in October/November riots which sparked off after the assassination of Smt. Indira Gandhi, the former Prime Minister of India.

10. In view of the preliminary objections raised by the learned counsel for the respondents, we heard the counsel of both the parties at length and we have also carefully gone through the records of the case. We have also

11. Shri Frank Anthony forcefully contended that what is really at stake is the reputation of the applicant who was the Deputy Commissioner of Police in charge at the relevant time and that the reputation of a Government servant is a service matter which could be adjudicated upon by the Tribunal. According to him, the applicant is aggrieved by the decision contained in Justice Ranganath Misra Commission's Report which has been extracted above. The said decision will partake of the nature of an 'order' within the meaning of Section 19(1) of the Administrative Tribunals Act which provides that a person aggrieved by any order pertaining to any matter within the

jurisdiction of a Tribunal, may make an application to the Tribunal for the redressal of his grievance.

12. Shri Frank Anthony also referred to the provisions of Section 3 (q) and Section 14 of the Administrative Tribunals Act. Section 3(q) which defines the expression 'service matters' reads as follows:-

'"Service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

13. Section 14 confers on the Tribunal all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court in relation to all service matters concerning a member of any All India Service. The definition of service matter contains an enumeration of certain matters and the following residuary provision:-

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"Any other matter whatsoever".

14. Smt. Raj Kumari Chopra, learned counsel for respondent No.1, contended that the relief sought in the application is against the Commissions of Inquiry Act and the Tribunal cannot give any relief against the Fact Finding Commissions appointed by Government. Though the Tribunal can exercise all the powers of the High Court,

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it is limited to the field of service laws and the present application goes beyond that.

15. Smt. Avnish Ahlawat, the learned Counsel for respondents 2-6, contended that the reputation of a person is not a service matter and that if the reputation of a Government servant is at stake, the proper remedy for him is to file a suit in a civil court.

16. To our mind, matters covered by the Fact Finding Commissions, referred to in the application, are of public importance concerning the maintenance of law and order, the role of Police in this regard, etc., but cannot be viewed as dealing with service matters, pure and simple. These Commissions have attracted public attention, have been debated in Parliament and outside and raised issues of public importance. It is well settled that the findings of Fact Finding Commissions are only recommendatory in nature. Appointment of such Commission is in discharge of the sovereign or quasi sovereign functions of the State and cannot be hamstrung by application under the Administrative Tribunals Act which is specific to the redressal of grievances of an individual or group of employees. If and when the authorities concerned propose to take action pursuant to the recommendations of a Commission, it will be open to the aggrieved person to move a court of law or other appropriate forum seeking redress, if he so advised. The applicant has not stated in the present application that any action or decision has been taken by the authorities concerned adversely affecting his conditions of service in the Government. We cannot stall the working of such Fact Finding Commissions.

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merely on the apprehension that the Government would take action pursuant to the recommendation of such Commissions at a distant date. The jurisdiction of the Tribunal can be invoked only in a case where a Government servant is aggrieved by an order pertaining to service matters which cover the entire gamut from recruitment to retirement.

17.) Even if for the sake of arguments, it is accepted that the Fact Finding Committees/Commissions have indicted or are likely to indict the applicant without hearing him, the applicant has no right to restrain the respondents from appointing such fact-finding bodies. At its worst, the action of the respondents in appointment of these bodies can be taken to be a sort of preliminary investigation or enquiry to decide whether disciplinary proceedings should be initiated or not. In Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854, the Supreme Court held that a preliminary enquiry is not governed by the provisions of Article 311(2) of the Constitution because such an enquiry is really for the satisfaction of the Government to decide whether punitive action be taken or any other action in terms of the Rules and conditions of service of the employee concerned shall be appropriate. The Supreme Court further cautioned that such an enquiry must not be confused with the regular departmental enquiry which usually follows such a preliminary enquiry. They observed as follows: -

"In short, a preliminary inquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein.

Such a preliminary inquiry may even be held ex parte, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But, at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government, and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Art. 311 and all the rights that that protection implies. ^{or (Emphasis supplied)}

Accordingly, the applicant does not have any prima facie case to claim intervention of the Tribunal at this stage.

18. We are, also, not impressed by the argument of Shri Frank Anthony that reputation of an officer is a service matter to be adjudicated upon by the Tribunal in exercise of the powers conferred on it. At best, reputation is an incident of service or the quality of service rendered and cannot by any stretch be construed as a condition of service.

19. Incidentally, it may be pointed out that when the conduct of an All India Service Officer is required to be vindicated, he is not without any remedy. Rule 17 of All India Services (Conduct) Rules, 1968 provides, inter alia, that "no member of the Service shall, except with the previous sanction of the Government, have recourse to any court or to the Press for the vindication of any official act which has been the subject matter of adverse criticism or any attack of a defamatory character." It is open to a member of the All India Service, like the applicant, to move the Government for its sanction to have recourse to filing a suit in a competent court to vindicate his good character and conduct and to seek remedy against the persons concerned for any attack of defamatory character on him, if he is so advised.

20. In the light of the foregoing, we have come to the following conclusions: -

- (i) The Administrative Tribunals Act does not confer any jurisdiction, power or authority on the Tribunal to strike down the report, in whole or in part, of Justice Ranganath Misra Commission which had been duly constituted in accordance with the provisions of the Commissions of Inquiry Act, 1952. We

refrain from expressing any opinion on the alleged objectionable portions in the report pertaining to the conduct of the applicant.

Assuming that some of the ~~portions~~ [✓] of the report adversely affect the reputation of the applicant, the Tribunal is not the proper forum to seek redressal of his grievance, as in our view, it is not a service matter to be adjudicated upon by us.

(ii) Likewise, it does not belong to the province of this Tribunal to call upon the respondents to clothe the Justice ~~Commissioner~~ [✓] D.K. Kapur Committee and Justice M.L. Jain Committee with powers under Sections 5 and 11 of the Commissions of Inquiry Act, 1952. The Administrative Tribunals Act does not confer any jurisdiction, power or authority on the Tribunal to issue an order of stay to forestall the inquiry by these Committees or to direct the manner in which the inquiry should be conducted. The jurisdiction of civil courts to adjudicate upon such matters has not been ousted by the Administrative Tribunals Act, expressly or by necessary implication.

(iii) The alternative relief prayed for appears to be anticipatory in nature. No one can surmise at this stage, [✓] whether and in what manner [✓] the respondents would act upon the recommendations contained in the reports submitted by the Commission/Committee. No one can predict at this stage as to the precise nature of action, if any, which is in the contemplation of the respondents.

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(iv) If and when any disciplinary or other departmental action based on specific misconduct is initiated against a Government servant, it will be open to the aggrieved person to seek appropriate reliefs from the Tribunal. That stage ^{is been or} has not reached in the present case.

21. Accordingly, the application is rejected in limine under Section 19(3) of the Administrative Tribunal Act, 1985 with no order as to costs.

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

Parikh
16/6/88
(P.K. Kartha)
Vice-Chairman (Judl.)