

G. P. Bvc.-(J)-293-75000-9-83.

Spl. H. C. C. D., 46E.

District : Bhavnagar.

Stamp No. —

Advocate Mr. P. M. Thakkar.

Office Note, if any,

Prays for int. relief -

CIVIL APPEAL
APPLICATION No 43 of 1986
(Spl. C.A.)

(Under _____ Act)
(Art. _____ of the

Constitution of India)

To be admitted the File.

This day of 1986

Assistant Registrar

Court's Order (Lokayukta / Subdivisional H. C. (1) : OR
(Subdivisional H. C. (2)

No interim reliefs to
the present motions of said date off the date of filing
The applicant contends that and before the date of filing
the authority holding the
deposited papers has
no jurisdiction and is
not a competent authority
for hearing the inquiry. In
my opinion that this contention
can be raised by the applicant

before the authority
before whom the
inquiry is pending
is not necessary to say
such contention,
if raised, will be
have to be dealt
as a
preliminary point.

B.L. Gaikwad
19.2.1986

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD

O.A. No. 30/86

DATE OF DECISION 28th July 1986

S.L. Bhutak Petitioner.

D.M. Thakkar Advocate for the petitioner(s)

Versus

Union of India .. Respondent.

CORAM : (1) Hon'ble Mr. P.H. Trivedi (Vice Chairman)

(2) Hon'ble Mr. P.M. Joshi (Judicial Member)

Per : Shri P.M. Joshi (Judicial Member)

ORAL ORDER:

Order below original application No. 43 of 1986.

Heard Mr. D.M. Thakkar holding proxy for Mr. P.M. Thakkar, learned counsel for the applicant. Mr. Thakkar assails the impugned Memorandum (dated 29-8-85) of imputations of misconduct issued by Dy. General Manager, Gujarat Tele-Communication Circle, Ahmedabad, regarding the proposed inquiry against the applicant. Before admitting the application, it is requested by Mr. Thakkar that a notice be issued against the respondent.

It is pertinent to note that initially, when the application was presented, Mr. Thakkar was heard with regard to the interim relief and it was found that there was no case for granting any such relief. While passing the order on 19-2-86, it was expressed that the contention regarding the competency of the Deputy General Manager (Admn.), should be raised by the applicant, before the authority before whom the inquiry is pending. It was further observed that such contention if raised will have to be decided as a preliminary point. It is stated by Mr. Thakkar that he has filed such an application before the said officer. However he is not sure about the date on which such application has been filed by the applicant.

While taking us through rule-49, it is vehemently contented by Mr. Thakkar that he has challenged the very initial action on the part of the Deputy General Manager, whereby the article of charge is served upon the applicant. According to him he is

not competent officer to take such action under the rules. Suffice it to say at this stage that the Deputy General Manager i.e. the person who has issued the memorandum is admittedly not the enquiry officer and even the action of his issuing the memorandum when challenged before him can be decided as a preliminary point. Now when the contention raised by the applicant in this regard has not been decided or rejected by the authority the applicant would have no cause of action. Hence the application is *prima facie* premature and the same is rejected summarily, as the applicant is required to exhaust the remedy available to him. A certified copy of this order be supplied to the applicant.

Joshi
(P.M. JOSHI)

MEMBER

Trivedi
(P.H. TRIVEDI)

VICE CHAIRMAN