

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

District : Bhavnagar.

Stamp No. —

Advocate Mr. P.M. Thakkar.

Office Note, if any.

Prays for int. relief.

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

(Under _____ Act)
(Art. _____ of the

Constitution of India)

To be admitted the File

This _____ day of _____ 198 .

Assistant Registrar

Court's Order

No interim reliefs for
the present.

The applicant contends that
the authority holding the
departmental Enquiry has
no jurisdiction and is
not a competent authority
for holding the enquiry. In
my opinion that this contention
can be raised by the applicant

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

before the authority
before whom the
enquiry is pending
it is needless to say
that the contention,
if raised, will be
have to be ~~decided~~
decided as a
preliminary point.

B.L. Desai.
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.

(P.M. JOSHI)

MEMBER

(P.H. TRIVEDI)

VICE CHAIRMAN