

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Compensation

O.A. No. 69 of 1986
~~E.A. No.~~

DATE OF DECISION 14-12-1992

Shri P.G. Navani Petitioner

Party in Person Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Akil Kureshi for Advocate for the Respondent(s)
respondents no 4 & 5

Shri Mukesh Patel for Jayant Patel

Shri Sandip Shah for Anil Dave.

CORAM :

The Hon'ble Mr. N.V. Krishnan

Vice Chairman.

The Hon'ble Mr. R.C. Bhatt

Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Shri P.G. Navani (I.P.S.) (Retd)

61, Swapnalok Apartments,
Chitralaya Society
Panchvati Marg,
Behind Gajjar Hall
Law Garden, Ellisbridge
Ahmedabad -6.

Applicant.

Advocate

Party in Person.

Versus

1. State of Gujarat
Notice to be served
through the Secretary
to the Government of Gujarat,
General Administration Department,
Sachivalaya Gandhinagar.
2. Union of India,
Notice to be served through
the secretary to Government of India
Ministry of Home Affairs, New Delhi.
3. The Director General and Inspector General
Of Police, Gujarat State, Meghaninggar, A'bad.
4. Shri Madhavsingh F. Solanki
Ex. Chief Minister of Gujarat
Bungalow No.8, Sector No. 19 Gandhinagar.
5. Shri Prabodhbhai Raval,
Ex. Home Minister of Gujarat
6-A, Maitri Flats, Swastik Society
Near Stadium Ahmedabad.
6. Shri V.T. Shah
Ex. Director General and Inspector General
of Police, Bungalow No.33, Duffnala, Shahibaug,
Ahmedabad-4.

Respondents.

Advocate

Shri Akil Kureshi for Hamid Kureshi
Shri Mukesh Patel for Jayant Patel
Shri Sandip Shah for Anil Dave.

J U D G E M E N T

In

O.A. 69 of 1986

Date 14-12-1992.

Per Hon'ble

Shri N.V. Krishnan

Vice Chairman.

The applicant retired from the Indian Police Service (I.P.S) on 28-2-1985, on superannuation, from the I.P.S Cadre of the Gujarat State. At the time of retirement he was holding the non cadre post of Director General & Inspector General of Police (Armed units, Training & Computer), which was declared equivalent in status and responsibilities to the cadre post of Director General & Inspector General of Police . He filed this application on 14-7-1986 under section 19 of the Administrative Tribunal Act 1985 - Act for short. The nature of his grievance has been stated by him in para 3 (iv) of the application and it is produced below :

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For recovery of damages for injury caused to applicant by deliberate contemptuous violation of the Rule 9 of the Indian Police Service (Pay) Rule, 1954 in predetermined vindictive pattern by every time since several years deliberately upgrading the lower posts by creating such higher non-cadre posts without substance of inferior status and responsibility to give applicant unjust and unequal or unlawful treatment in violation of Article 311 and Articles 14 and 16 of the Constitution, by persistent high handed exercise of authority with malicious and deliberate intention and design, in colourable exercise of power, infringing applicant's legal rights, with motive to cause harm to applicant, to degrade, insult and humiliate applicant socially and otherwise in the eyes of the subordinates, Police Force, colleagues and public at large and cause loss of reputation to applicant even by acting against the provisions of law, by making false representations, by

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wilful disobedience of the directions of law as to the way in which a public servant should conduct himself to knowingly cause injury to applicant by such disobedience of law resulting even in commission of offences by them in collusion and with common intention even in variance with the legal position decided by the High Court of Gujarat and in violation of the law laid down by the Supreme Court of India relating to the Rule 9 of the I.P.S (Pay) Rules, 1954."

2. In the light of this grievance we may see the reliefs sought by him in para 7. They are reproduced below :

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In view of the facts narrated in the foregoing paras particularly in para 6, the applicant prays for the following reliefs :

- (a) To direct the respondents State of Gujarat and/or the Union of India and others to pay the amount of Rs. 50 lakhs (Rupees fifty Lakhs) as damages to the applicant.
- (b) To direct (if so deemed fit) the respondents, namely, the State of Gujarat and/or the Union of India to recover, (after first making full payment to me) the entire amount of Rs. 50 lakhs (Fifty Lakhs) from three other respondents, namely, Sarvashri Madhavsingh Solanki, Prabodhbhai Raval and V.T. Shah so as to fix Accountability on these wrong doers for the reasons submitted specially in para 118 to 120 above.
- (c) To award the cost of this application to the applicant.
- (d) From the above amount of Rupees Fifty Lakhs applicant will take rupees twenty five lakhs only and the remaining amount would be given

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given by the applicant either to the Gujarat State Police Families Welfare Fund for welfare activities and schemes for the men, officers and their families or a Trust will be started by the applicant for their welfare.

- (e) To see for itself the evidence of conduct of Shri V.T. Shah and if the Hon'ble Tribunal deems it fit to consider recommending to the Union and/or State Governments for compulsory retirement of such officer (Shri V.T. Shah) who cannot stand and act upright as per the rules, law and the Gujarat High Court judgement.
- (f) To consider, after seeing facts and evidence, recommending to the Union and/or State Governments for action as requested and prayed in paras 108 and 109 above for the security and integrity of the country and the Armed Forces and uprightness of administration, as deemed fit.
- (g) To grant any other and further relief as may be deemed just and proper in the interest of justice. 7

3. We note that the applicant has not impunged any order in this application. When the application came up for admission on 20-10-1986 the applicant appeared in person and stated on that his cause of action is limited to the resolution of 9-1-1985 (Annexure 39) of the Government of Gujarat and that his relief is limited to clauses a, b and c of para 7 reproduced above. Notices were issued to the respondents on admission and the respondents filed replies opposing the admission on various preliminary grounds. The application was, however admitted on 27-4-1987. The respondents have not filed

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a final reply to the application, despite ^{being} given sufficient time for the purpose.

4. This application ^u ~~was~~ taken up for final hearing on 19-10-1992, when the applicant appeared in person and the respondents were represented by counsel. The applicant and the learned Counsel for the respondents were heard at length and the case was reserved for orders.

5. The applicant stated that the resolution, dated 9-10-1985 of the first respondent (Annexure A-39) has a history behind it. Prior to March 1984, there was only one post of Director General and Inspector General of Police in the I.P.S cadre of Gujarat. This post was held by Shri P. N. Writer, I.P.S., who retired on 28-12-1984. It is the applicant's case that he was the next senior most I.P.S Officer on the cadre and he had an outstanding record. Therefore, the first respondent should have appointed him as ^{Director General (D.G.)} ~~D.G.~~. However, the first respondent decided otherwise, but, yet, could not supercede him in view of his record, and it was decided to create an ex-cadre post and appoint the applicant to that post, to prevent him from raising any objections. Accordingly, Government passed a resolution dated 1-3-1984 (Annexure 1), by which an ex-cadre post of Director General and Inspector General of Police (Armed Units ~~xxx~~ Training and Computer Centre) Gujarat State (D.G.-ATC, for short) was created with Head Quarters at Ahmedabad on a fixed pay of Rs. 3000/- per month for the period from 1-3-1984 to 28-2-1985

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Government also declared this post to be equivalent in status and responsibilities to the cadre post of D.G. (Director General and Inspector General of Police) in the State, for the purposes of Rule 9 (1) of the Indian Police Service (Pay), ^{Rules 1954.} The applicant was promoted and appointed to this post by a notification of the same date (Annexure 2). Shri V.T. Shah, I.P.S., the sixth respondent, who was admittedly junior to the applicant, was appointed to the cadre post of D.G.

6. The applicant submits that during his tenure of about a year on the post of D.G. ATC, he was treated shabbily. He was ignored. His powers were usurped by the D.G. ^{He protested.} The last of his protests relates to the arrangement in connection with the celebration of Republic Day 1985. In that context, on 9-1-1985, he was **stripped** of the work relating to Armed Units by a resolution of the Government (Annex.39). Being aggrieved by this, he sent a letter dated 15-1-1985 (Annex.41). Para 19 of that letter, addressed to the Chief Secretary is as follows:

" I have patiently and quitely borne all the humiliations which have been thus inflicted on me from April 1980 onwards. But, as a disciplined officer, I did not raise even a single protest but promptly every time carried out the orders of the Govt. Even now when I was due to retire

on superannuation on attaining the age of 58 on 28th Feb. 1985 (after few weeks) it was least expected that I would be put to further humiliation. Thus, it would be seen from the events of the last five years that because of my outstanding record Government had to give me three promotions in the last five years of service because they could not supersede me due to my outstanding merit, but every time they have created a higher non-cadre post without any substance to post me there and then down graded it."

He concluded the letter by requesting Government that in case they were either unwilling to rescind the resolution dated 9-1-1985 (Annex.39) and restore the status quo in regard to his position as D.G. ATC or to appoint him to the cadre post of D.G., he should be given - immediately, leave preparatory/retirement and be permitted to superannuate on 28-2-1985. Government neither relented nor replied to the letter. He retired on superannuation on 28-2-1985. The ^{alleged cumulative} treatment meted out to him has found expression in this application. and we will deal with it latter.

nature of the

7. We may now set out briefly the treatment meted out to the applicant after his appointment as DG ATC as this will provide the back-ground for the Annex.39 Resolution dated 9-1-1985 and it will also show what action, if any, was taken by the applicant in these circumstances.

8. The applicant has admitted that, on his appointment to this post, declared equivalent in status and responsibilities to the cadre post of D.G., he was not even provided with either an office or with any

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staff or with a phone. He states ~~in~~ in para 28 of his application as follows:

"The applicant used to sit at his residence alone using it as Office. Neither any staff (not even one human being) nor even phone for office were provided or sanctioned, despite requests. This position continued from 1-3-1984 to 8-1-1985 and also from 9-1-1985 to 28-2-1985, the date on which the applicant retired from the so called high office of - Director General and Inspector General of Police on superannuation on reaching the age of 58 years."

9. While holding this 'high office', the applicant states, that he was not permitted to exercise any authority, particularly over the Armed Units, which was always exercised by Shri V.T.Shah the D.G. The Applicant complains as follows in para 19 of his Application:

" Despite this clear and specific legal position, Shri V.T.Shah continued to issue all types of orders pertaining to State Reserve Police Force relating to the deployments, transfers, promotions, postings, movements, parades, training, etc. etc. even though all those - subjects were within the jurisdiction of the applicant only..."

When Shri V.T.Shah, DG, persisted in issuing such unauthorised orders, the applicant took courage and thought it fit to issue a teleprinter message to all authorities concerned on 3-4-1984 (Annex. 7) that he alone has the authority to order deployment, transfer and movement of the Special Reserve Police Force. The

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D.G. was requested that in case he wanted any force he should make a request to the Control Room set up by the Applicant.

10. The applicant states that, on 6-4-1984, the Home Secretary spoke to him about the Annex.7 message and asked the applicant to "hold up the order for a few days, as the Home Minister (Mr. Prabodh Raval) desires that these orders should be issued only by Shri V.T. Shah"

The applicant states that he explained the legal position to the Home Secretary that the D.G. cannot exercise any powers in this area. Nevertheless, the Annex.7 ^{order} was kept in abeyance until further orders by the applicant by issuing another message on 6-4-1984 (Annex.8). There is no indication as to what happened subsequently to the Annex.7 order. Perhaps, Shri V.T. Shah continued to exercise those powers thereafter without any hindrance or protest from the applicant.

11. No notice was taken of the applicant's letters to the D.G., ~~xxx xxxxxx~~ (i) stating that the authority of Shri V.T. Shah DG to transfer a Mounted Police Sub-Inspector has been challenged in Civil Application No.1984/84 (Annex.11), (ii) requesting for all records of SRPF to be sent (Annex.12), (iii) conveying the views of the Commandants that orders of movement, deployment should be issued only by the DG ATC (Annex.13), (iv) protesting against orders issued by the DG transferring SRP Police Inspector (Annex.14) and (v) for allocation of staff for his office (Annex.15). Therefore, all authority was being exercised by the DG, totally ignoring the applicant.

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12. We can notice one instance about the alleged shabby treatment meted out to the applicant. As no staff was given to the applicant, he thought that he could entrust the Commandant SRP Gr.XIII, who had less work, to work as his staff Officer and, therefore, he issued an order in this behalf on 15-6-1984 (Annex.A-19) with copies to all field authorities and to Government. This order was promptly countermanded by the Government and he was snubbed by Annex.A-20, wireless message and he was asked to clarify under what authority he issued that order.

13. We can conclude this recitation with the instance of presenting a Guard of Honour to the Governor of Gujarat, for which purpose Shri V.T.Shah, the DG, directly summoned the SRP, without even intimating the applicant about it. In para 49 of the application, it is stated that the applicant complained about this to the Chief Secretary. Despite this, the D.G. repeated this action on the occasion of Independence Day on 15-8-1984, for which purpose he directly called the S.R.P. for the State functions,

14. We can now come to the events on the eve of the Republic Day 1985 celebrations. Before the applicant could initiate any action in this regard, Shri V.T.Shah, the D.G. issued on 5-1-1985, directions to all the Commandants under the applicant to send one Company to participate in the Republic Day Parade (Annex.A-33) which should report at the Police Head Quarter on 19-1-1985 and also to send the whole band with equipments and dress on 8-1-1985 (Annex.A.33)

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and Annexure 34. The applicant promptly sent a message to the D.G on the same day (Annex.-A-35) objecting to the direct demand by him^{and} asked him to avoid such direct demands in future. He endorsed a copy of the message to all the Commandants of the S.R.P under him^{& asked them} to await his instructions. He also issued a message on 6-1-1985 (Annexure A-32) to all authorities, which gives the impression that he ^{is} not the DG directly responsible for organising the Republic Day function. This action was resented by the Government who informed that the action taken by him (i.e. Annexure A-35) was not proper and that he should have approached Government and he should not have interfered with the compliance of the instructions issued by the D.G. Police. Government, therefore, desired him to instruct all concerned to comply with instructions issued by the D.G. Police (i.e. Annexure A33 and A-34) for sending bands and one company for the Republic day celebration. The applicant had to meekly submit to this direction and to send such message on 10-1-1985 (Annexure A-37) to all his authorities to comply with the directions of the D.G. Police. The applicant also sent message to the Home Secretary on the same date (Annexure A-38) stating that the Republic Day arrangements were his duty and not that of the D.G and that he had issued same instructions on this subject on 6-1-1985 (Annexure A-32)

15. Perhaps, as a result of this incident Government passed a resolution on the same day viz, 9-1-1985 (Annexure A-39) by which the control over Armed units was taken away from the parview of the DG. ATC and vested in the D.G.

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The applicant was thus stripped of the most important function allotted to his post.

16. It is then that the applicant, feeling aggrieved by the Annexure A-39 resolution, wrote a letter dated 15-1-1985 (Annexure 41)^{an} extract of which has been reproduced in para 6 supra. In para 2 of this letter he states as follows :

Service rules of the Indian Police Service provide that all the super time posts should be filled in by an officer with merit and with due regard to his seniority. It is seen that since nearly last five years every effort has been made to humiliate me and give me no proper work and posting due to my merit rank and seniority by every time creating non-cadre posts, upgrading and down grading these posts and by every time converting cadre posts into non-cadre posts for this purpose. Following few instances would kindly convince you about the same.

The instances he then refers to are as follows :

1). He was transferred in 1980 from the post of Commissioner of Police, Ahmedabad in the rank of Additional I.G. Police to a non-cadre post of Additional I.G.P Industrial Security with a staff of about two clerks and practicably no work and he was kept on that post for about two years "just to humiliate me".

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ii). He was never permitted to occupy the cadre post of Spl.I.G. of Police and Director, Anti-Corruption Bureau. When the incumbent retired on superannuation, that incumbent was given an extension of six months. Thereafter, the cadre post was kept in abeyance and a non-cadre post of the same designation was created and his junior, Shri M.J. Jadeja, a retired I.P.S. Officer, was re-employed on that post. The applicant was promoted to an ex-cadre post, ~~The applicant was promoted to the~~ of Special I.G. of Police viz. Principal, Police Training College, Junagadh, which originally was of the rank of a Superintendent of Police, but was recently upgraded to that of a D.I.G.

iii). ~~He cited~~ The last instance ~~is his~~, he cites, is his appointment to the non-cadre post of D.G., ATC.

17. From the above narration, it is clear that there were many instances when the applicant felt that he was insulted and humiliated. He himself has so alleged in the Annex.41 letter dated 15-1-1985 extract of which have been reproduced with emphasis in paras 6 and 16 supra. Yet, he has not shown that he took any effective action against the authorities. He did not approach the High Court of Gujarat or the Supreme Court seeking the kind of relief which this application ^{seeks} or any other appropriate relief. He remained content with making ineffective representations to the State Government, which ~~are~~ were ignored. That is clear from the letters he wrote during the period he was D.G. as shown earlier.

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18. That apart, there is evidence to suggest that he really was not discontented as he has made out in the present application. He was, infact thankful to the Chief Minister and the Home Minister for giving him promotion as seen from the Annexure A-45 letter dated 4-5-1982, he wrote to the Home Minister when he was Spl. I.G.P & Principal Police Training College, Junagadh. The applicant was, perhaps, staying in the guest house and there were rumors that Government had asked him to vacate the Circuit House and occupy the house in which his precessor lived. It is in this connection he wrote this letter to the Home Minister. Inter alia, he writes as follows :

Actually I would like to state that I had/have absolutely no interest either way whether Kaumudi Vihar is or is not repaired, because personally it is not going to affect me because when I had seen Hon'ble Home Minister on 23-2-1982 at Gandhinagar the Hon'ble Home Minister had been kind enough to tell me that "You are a very capable and competent officer. You go there for a few months and whoever gets promoted as Spl. IGP after this will go to the P.T.C. first, and you will come back to Ahmedabad. This was extremely gracious on the part of Hon'ble Home Minister and I am grateful for the same. Before coming to Junagadh I had also called on Hon'ble the Chief Minister on 5-3-82 at Gandhinagar. to thank him for the promotion and among other things the Chief Minister had been kind enough to remark " What makes you think that you will be there for long ? ". I told the Chief Minister what the Home Minister had stated to me (as mentioned above) and Chief Minister was pleased to say "Yes, whoever is now promoted as

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Spl. IGP will go there and you will come back to Ahmedabad ". I am grateful to both, the Home Minister and the Chief Minister for their this appreciative opinion and kind feelings for me.

Further comments on the applicant's grievances against the Chief Minister and Home Minister are superfluous.

19. During arguments, the applicant came out with what appears to be ^{the} truth. He was sure that he was being humiliated, but not too openly. The State Government was always ^{willing} to give him promotion and therefore nothing much could be proved in a Court of Law Had he approached the High Court he might have even been suspended and harassed. For, even without such provocation, the Chief Secretary to the Government of Gujarat sent him a letter only two days before his retirement conveying Government's displeasure over certain alleged acts of commission and ^{commission} omission and ^A He has challenged that letter in O.A. 238/1986, which was also heard on the same day. It is difficult to escape feeling that the applicant was afraid of reprisal by Government and hence he suffered all this humiliation without any protest.

20. Alternately, he was really satisfied about the promotion given to him from time to time, even if it be to a sine cure non-cadre post, which did not carry any duties worth the name. That might explain why this applicant, who claims to be an outstanding officer in the Police Force, did not fight for the prestige and dignity of the office held by him. The only excuse he gives is

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is that, being a Disciplined Officer, he thought that Government would do justice to him. This is a lame excuse. The applicant cannot be so naive as to believe such assurances, if he felt that he was being humiliated.

21. Whatever be the reasons, we ~~do~~ have no doubt that if any insult or humiliation was heaped upon him, the applicant ^{having} ~~suffered~~-acquiesced in it, has forfeited high right to seek relief in that regard. What is more important ^{is} that none of the orders by which he feels aggrieved or insulted or humiliated, has been impugned in this Application. That is surprising because on the authorities relied by him, he could well have obtained directions in his favour. For, the applicant was fully aware of the judgment rendered by the Supreme Court in Royappa's case 1974 (CCS) 165 from which he has reproduced extracts in the present Application as also in Annexure 42. He was aware of the following declaration of the Supreme Court in the judgment in that case:

" But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature of responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and the responsibility of the functions and duties of the two posts are so dis-similar that no

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reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of the equivalence is malafide or in colourable exercise of power or it is cloak for displacing a member of the Indian Administrative Service from Cadre post which he has occupied, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. "

22. In addition, the applicant had also in his favour a judgement of the High Court of Gujarat in Spl. Civil Application 2955, 2956 and 2957 referred to in para 43 of his application. These applications were filed by the officers and men of three SRP Companies assisting the State Prohibition Squad, against their transfer ordered by the ~~who was~~ the second respondent therein. applicant. The applications were dismissed with the following findings.

" There is no substance in the contention that respondent no. 2 had no power to transfer the petitioners. A notification dt. 1-3-1984 issued by the State Government which is produced before me and placed on record shows that respondent No.2 is promoted and appointed to officiate as DG & IGP (Armed Units, Training and Computer Centre), Gujarat State, Ahmedabad. It is not disputed that SRPF is part of the Armed Units. It is therefore, clear that the SRPF are under the direct control of respondent No. 2. Since these companies are under the direct control of DG. & IGP (Armed Units), respondent No.2 had authority.... ".

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In this connection the applicant states in para 44 of the application as follows :

" This legal position and this decision of the High Court were known to Shri K.D. Buddha, Shri V.T. Shah, Shri Prabodhbhai Raval and Shri Madhavsingh Solanki and it was also informed to the Home Secretary under letter No. ATC/885 dt. 10-8-1984 (Annexure 29). It may be mentioned that while filing an affidavit in the High Court the DG, (Shri V.T. Shah) did not even contend that he had any jurisdiction over the SRPF though that was the point at issue and in question. Thus, it was clear that Shri V.T. Shah fully knew before the High Court decision and after the High Court decision that he had no jurisdiction of any type relating to the Armed Units and SRPF (and including Training and Computer Centre) and continued to commit contempt of even the decision and position stated by the Gujarat High Court. On the strength of this judgement delivered on and his above averments 10-7-1989, he could have possibly obtained a direction to the DG to desist from issuing orders he was not competent to issue. The applicant's stock would have gone high with the forces working under him.

22. A. The applicant vehemently pleaded that he had not acquiesced in the illegal orders passed by Government or other authorities. For, according to him he had protested against their actions.

2. Merely because some ineffective protests had been

lodged it does not mean that the applicant did not ~~xxxx~~ acquiesce in the actions of the respondents. Undoubtedly, it was open to him to approach the High Court/ Supreme Court. If he did not resort to this most effective remedy - whatever be the reasons therefor - it can only mean that he was either contended with the respondents' decisions or he resigned himself to such decisions. In either case he forfeits his right to re-agitate the matter as he is estopped by his conduct.

23. In these circumstances, we hold that the applicant has no subsisting grievance whatsoever, in respect of the treatment meted out to him between 1980 and 28-2-1985. We now specifically turn to the Resolution dated 9-1-1985 (Annex.39). In the first place he has not impugned it. If he really wanted any relief against the order in that resolution he ought to have approached the High Court of Gujarat, without any loss of time, to get that order quashed and to restore his position as D.G., ATC, including control over the armed units or for being posted as D.G., as he was to retire on 28-2-1985. i.e. about 50 days. Hence, after his retirement, the applicant ^{he can} ~~could~~ not be given any relief in respect of this Resolution, for, the resolution does not affect his pay or other material benefits.

24. For these reasons, we find that the applicant had not established that he has any grievance at all. The question whether the type of reliefs he has asked for can be granted does not, therefore, arise for a decision and therefore, we do not express any view in that regard and leave that issue open.