

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(8)

O.A. No. 237 OF 1987.
~~XXXXXX~~

DATE OF DECISION 2.12.1987.

SHRI P.G. NAWANI, I.P.S.(Retd.). Petitioner

PARTY-IN-PERSON

~~Advocate for the Petitioner(s)~~

Versus

THE STATE OF GUJARAT & ORS. Respondents.

ANIL DAVE FOR RESP. NO. 1 & 2
HAMID KURESHI FOR RESP. NO. 3 & 4

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER

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

Shri P.G. Nawani, I.P.S.(Retd.)
Flat No. 46, Swapnalok Apartments,
Chitralaya Society,
Near Chinoy Bagh, Law Gardens,
Opp. Gujarat Nursery,
Ellisbridge, Ahmedabad - 380 006.

..... Petitioner.

(Party-in-person)

Versus.

1. State of Gujarat,
(Notice to be served through
the Chief Secretary, Government
of Gujarat, General Administration
Department, Sachivalaya,
Gandhinagar.)
2. Shri Vijay Tarachand Shah,
Formerly working as
Director General and Inspector
General of Police,
Gujarat State, Ahmedabad
Now Advisor on Law and Order
to the Chief Minister,
Sachivalaya, Gandhinagar and
Residing at Bunglow No. 33,
Duffnala, Shahi Bagh,
Ahmedabad.
3. Shri Madhavsinh Solanki,
Former Chief Minister of
State of Gujarat,
Presently Residing at
Bunglow No.8, Sector No. 19,
Gandhinagar.
4. Shri Prabodhbhai Raval,
Former Home Minister,
Government of Gujarat.
Presently residing at
6-A, Maitri Flats, Swastik Society,
Near Sardar Stadium,
Ahmedabad - 15. Respondents.

(Advocate: Anil Dave for Resp.No.1 & 2,
Hamid Kureshi for Resp.No. 3 & 4)

J U D G M E N T

O.A. NO. 237 OF 1987.

Date : 2.12.1987.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri P.G.Nawani, I.P.S.(Retired) has moved
this Tribunal by filing application under section 19 of the

Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). He has prayed that the State of Gujarat be directed to grant him sanction as required under section 197 of the Code of Criminal Procedure, 1973, to prosecute (i) Shri Madhavsinh Solanki, Ex. Chief Minister, (ii) Shri Prabodhbhai Raval, Ex. Home Minister, & (iii) Shri. V.T. Shah, Ex. Director General of Police and Inspector General of Police of Gujarat State for the offences punishable under section 166 & 175 of Indian Penal Code and Section 145(2) of the Bombay Police Act, 1951. According to him, he had placed the facts and circumstances constituting the offence alleged to have been committed by them in his application dated 23rd December, 1985, addressed to His Excellency, the Governor of the State of Gujarat and requested him to grant him permission under section 197 of the Criminal Procedure Code to lodge complaint for prosecution of the aforesaid persons for the offences punishable under section 166 & 175 of the I.P.C. and Section 145(2) of the Bombay Police Act, 1951, r.w.sec. 120-B & 34 of the I.P.C or under section 109 of the I.P.C. It is alleged that he has received the letter dated 28th February 1986 from the Deputy Secretary to the Governor of Gujarat informing him that "the matter is being examined" (Annexure-2, page 152), but thereafter despite his several representations, he has neither received any reply nor refusal by the State Government in granting sanction which should be considered as wrongful and accordingly, he has been constrained to redress his remedy by an order of a mandamus.

2. Pending admission, the notices were issued to the Respondents to show cause why the application should not be admitted. In response to the notice served upon them Mr. Anil Dave has appeared on behalf of the State of Gujarat and Mr. V.T. Shah (Respondents No. 1 & 2) and the learned counsel Mr. Hamid Kureshi appeared for Respondents No. 3 & 4. In their counter filed on 14.9.87, the Respondents No. 3 & 4 contended inter-alia that there are neither factual foundations nor legal basis on which there is any

(17)

justification for the applicant to approach this Tribunal with the present application seeking the reliefs as prayed for as this Tribunal will have no jurisdiction to entertain, and deal with the same. The applicant has also filed his rejoinder dated 17th September 1987 wherein he has asserted that this Tribunal alone has the jurisdiction and no other Court (including the High Court) has jurisdiction to decide the reliefs sought in the application. The petitioner Shri Nawani is heard in person. We have also heard the learned counsels appearing for the Respondents and carefully considered the materials placed on record.

3. The main grievance of the petitioner is that during the year 1984 & 85, SRPF was under his control and Mr. V.T.Shah had neither any jurisdiction nor any competence nor he was required to look after the work pertaining to the armed units, he (V.T.Shah) continued to issue all orders pertaining to the SRPF and Government continued to write directly to Mr. V.T.Shah for all purposes of movements, developments, distribution and administration of the SRPF and the Government never replied to any of his letters. For these and other reasons, Mr. V.T.Shah, in pursuance of the common intention and common agreement on the part of Shri Madhavsinh Solanki and Mr. Prabodh Raval, in their capacity as public servants, in order to cause him injury committed disobedience of the directions of the law (SRPF Act, 1951 and the Bombay State Reserved Police Rules, 1959. (the detailed facts and circumstances leading to the motive of the alleged crimes the applicant has referred them in Part 2 & 3 of his application dated 23rd December, 1985 addressed to the Governor).

4. Mr. Hamid Kureshi, the learned counsel for the Respondents raised two-fold contentions viz; (1) that the subject matter of the application does not involve "service matter" at all and (2) the question of granting sanction or otherwise is a matter pertaining to criminal law, inasmuch as the petitioner seeks to exercise his fundamental right to move the Criminal Court for the alleged offences.

(2)

According to the petitioner Shri Nawani, the words "any other matter whatsoever" specifically mentioned as a separate residuary sub clause (v) of sub-clause Q of Section 3 of the Act covers refusal of grant of permission to the applicant (a Retired I.P.S) to file the Criminal case or Civil Suit or asking for permission under section 197 of the Code of Criminal Procedure.

5. It is true, after the establishment of the Administrative Tribunal under 'the Act', it takes away the jurisdiction and power of the High Court for adjudication of service matters. In J.B.Chopra & Ors (A.I.R. 1987 S.C. 357), it is held that the Administrative Tribunals, being a substitute of the High Court, had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Arts. 14 & 16(1) of the Constitution. The short question therefore, for our consideration, is whether the dispute raised in the application relates to the 'service matter' as contended. Our answer is in negative.

6. In the realm of the administration of Criminal Justice every individual has a right to prosecute any person or body of persons by whom one may have been injured when such injury gives rise to an offence. This right is a common law right which can only be limited by special legislation. The right of a citizen to have his grievance adjudicated by a competent Civil or Criminal Code is a part of the fundamental right of equality before law guaranteed by Article 14 of the Constitution (see A.I.R. 1970 Bombay 385). The provision contained under section 197 of the Code of Criminal Procedure embodies one of the exceptions to the general rule laid down in Section 190, that any offence may be taken cognizance of by a Magistrate enumerated therein (A. 1955 S.C. 196). Sections 193 & 195 to 199 of the Code, regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. The object of provisions contained

(B)

under section 197 of the Code is to guard against vexatious proceedings against public servants and to secure the well-considered opinion of a superior authority before a prosecution is launched against them. While granting such sanction to prosecute the appropriate Government must be satisfied that there is a *prima facie* case for starting the prosecution and this *prima facie* satisfaction has been interposed as a safeguard before the actual prosecution commences. In this regard, it was vehemently urged by the petitioner Mr. Nawani that the Governor himself has sole jurisdiction, privilege and duty to decide in his own discretion.

7. In the State of Maharashtra V/s. Ramdas Srinivas Naik & Anrs. (A.I.R. 1982 S.C. 1249) in light of the concession made before the High Court the Supreme Court, held that in deciding to sanction or not to sanction the prosecution of a Chief Minister (Shri A.R. Antulay) the Governor should act in the exercise of his discretion and not with the aid and advice of the Council of Ministers. Mr. Kureshi therefore rightly pointed out that the dispute raised in the present application pertains to the administration of Criminal Justice and the question to grant sanction or not by the Governor does not pertain to the service matters at all. We find considerable force in the submission made in this regard. When the question does not pertain to the service matters in connection with the affairs of the Union concerning a person, the jurisdiction as envisaged under section 14 of 'the Act', can not be invoked. Mr. Kureshi did not dispute that the petitioner, if he has any grievance, would be without a remedy. But according to him, the Tribunal will have no jurisdiction to grant the relief as prayed for by the petitioner.

8. It is pertinent to note that the petitioner Shri P.G.Nawani, Member of the Indian Police Service, retired on 28.2.1985 as Director General and Inspector General of Police, Gujarat State, Ahmedabad. Nearly 10 months thereafter, i.e. on 23rd December, 1985, he

(W)

addressed a letter to the Governor requesting him to accord sanction under section 197 to institute a complaint against the Respondents No. 2,3 & 4. It is significant to note that neither in the said letter nor in the present petition, he has referred to any violation of rules or conditions of the services which ^{may} call for adjudication. However during the course of his submission the petitioner pressed in service, the provisions contained under Rule 17 of the All India Service (Conduct) Rules, 1968, and contended that the provisions contained therein enjoin a duty upon him to seek a prior permission of the Government. In support of his contention, he has relied on the case of Badrinath V/s. Government of Tamil Nadu (A. 1986 Mad. 3). According to him, Rule 17 puts a restraint in instituting a criminal proceedings intended by him. We do not find any merits in the contentions canvassed by the petitioner in this regard.

9. In order to comprehend the contentions canvassed by the petitioner a reference may be made the rule 17 of the rules together with its explanation which reads as follows :-

"..... 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 official act which has been the subject matter of adverse criticism or attack of a defamatory character.

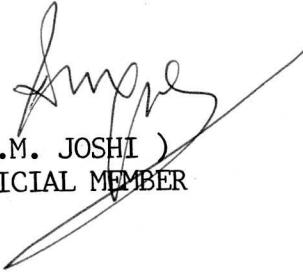
Explanation :- Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity, provided that he shall submit a report to the Government regarding such action."

10. Admittedly, in the instant case it is not the plea of the petitioner that the Respondent No. 2,3 & 4 had made any adverse criticism against him or that he is a victim of attack of a defamatory character. Consequently, the question of obtaining previous sanction of the Government under the aforesaid rule is not called for. The petitioner in this application, has sought sanction of the Governor in order to prosecute the Respondents No. 2,3,& 4 for the offence alleged to have been committed by them.



The offences punishable under section 166 & 175 of I.P.C. and Section 145(2) of the Bombay Police Act, 1951, are offences against public. The provision contained under rule 17 of the All India Service (Conduct) Rules, do not place any constrain, impediment or embargo in launching prosecution against the Respondents No. 2, 3 & 4. The petitioner as a retired Government servant, and even as a citizen, has a right to have his grievance adjudicated by a competent criminal Court. But his such right is taken away only in view of the provision contained under section 197 of the Code which enjoined upon a citizen to seek previous permission of the Central Government or the State Government as the case may be before launching prosecution against the public servants who are not removable from his office save by or with the sanction of the Government. In the instant case the Respondent No. 2, 3 & 4 are accused of offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The question therefore granting sanction by the Government which is the subject matter in dispute, in this regard does not relate to service matters as contemplated under section 14 of 'the Act'.

11. In this view of the matter we are clearly of the opinion that this Tribunal has no jurisdiction to grant the reliefs as prayed for by the petitioner. In the result, we hold that the application is not entertainable and it is hereby rejected in limine.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN