

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Recovery

O.A. No. / 238/87
T.A. No. X

DATE OF DECISION 14-12-1992

Shri P.G.Nawani

Petitioner

, P IN P

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Shri Anil Dave for res.no.1

Advocate for the Respondent(s)

Shri Akil Kureshi for Shri Hamid

Kureshi for res.no.2 & 3.

Mr.M.A.Panchal for res.no.4.

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 ?

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Shri P.G.Nawani, IPS (Retd.),
Flat No.46, Swapnalok Apartments,
Chitralaye, Oppo. Gujarat Nursery,
Ellisbridge,
Ahmedabad- 380 006.

.....APPLICANT

XXXXX 2
(P IN P)

VERSUS

1. State of Gujarat,
Notice to be served through
the Chief Secretary to Government,
of Gujarat, General Administration
Dept, New Sachivalaya,
Gandhinagar.
2. Shri Madhavsinh Solanki,
Ex- Chief Minister of Gujarat State,
Bungalow No.8, Sector No.19.,
Gandhinagar.
3. Shri Prabodhbhai Raval,
Ex- Home Minister of Gujarat State,
6-A, Maitri Flats, Swastik Society,
Near Sardar Stadium,
Ahmedabad-380 015.
4. Shri M.Sivagnanam,
Formerly (on 26.2.1985)
Chief Secretary to Government ,
Now Chairman , Gujarat Electricity Board,
Baroda.RESPONDENTS

(Advocate : Mr.Anil Dave for respondent no.1

Mr.Hamid Kureshi for respondent no.2 &3

Mr.M.A.Panchal for respondent no.4)

JUDGMENT

O.A./238/87

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JUDGMENT

O.A./238/87

Date : 14-12-1992

Per : Hon'ble Mr.N.V.Krishnan
Vice Chairman

Shri P.G.Nawani, ~~the~~ applicant,
was a member of the Indian Police Service (IPS) of
the Gujarat State cadre of that Service. He retired
on superannuation on 28.2.1985 from the ex-cadre
post of Director General and Inspector General of
Police Armed Units, Training and Computer. On
26.2.1985 i.e. 2 days before the superannuation
M.
Shri Sivgnanam, the Chief Secretary of the State
(Respondent no.4) sent him a D.O.letter (Annexure 1)
which reads as follows :

" An amount of Rs.50,000 was
sanctioned to you vide Government
Resolution, Home Department No.IPS-
1079-6374-B , dated 10.10.1974 for
the purchase of ready-built flat, which
was drawn by you on 23.10.1974. You
also purchased a flat with the help
of this advance in the Jasmin Coope-
rative Housing Society, Ahmedabad
and its possession was taken by you
on 1.11.1979. Subsequently, you
sold out the flat on 26.6.1980 and

repaid the outstanding H.B.A. on
5.7.1980. While doing so you have
committed following breach of rules:-

1. You had not executed an agreement in G.F.R. Form No.16-A before drawing the advance.
2. You were required to purchase the flat within three months from the date of drawal of the advance and to mortgage it in favour of Government of Gujarat. But, it was not done and you violated Condition No.3 of Government Resolution dated 10.10.1974.
3. You had not furnished surety bond required in G.F.R. Form No.19.
4. You were required to insure the flat at your own cost with the ~~Director~~ Director of Government. Insurance but it was not done and you violated Condition No.9 of Government Resolution dated 10.10.1974.

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The above omissions and breaches of rules (Sic- which) have been committed by you are viewed seriously by the Government and it has been decided by Government to convey its displeasure to you."

2. The applicant is aggrieved by this letter containing alleged defamatory remarks based on fabricated evidence. The applicant also states that this was the ~~xx~~ culmination of a series of actions taken from 1980 onwards by the respondents to insult him and to bring down in the eyes of his colleagues and the police force

3. Therefore, the applicant addressed a letter to the Chief Secretary to the Government of Gujarat on 20th August, 1986 (Annexure 33) i.e. after merely 18 months.

No.HBA/D.O.of 26.1.1985/1

Dated : 20th August,
1986.

Subject : Cancellation and withdrawal of D.O.dated 26.2.1985, expressing regret of Government, sending of written apology and action against the person(s) responsible for crimes etc.

Reference : 1. D.O.letter No.IPS-1079-6374
dated 26th February, 1985 from
Chief Secretary to th

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Chief Secretary to the Government of
Gujarat, Shri M.Sivagnanam addressed to
P.G.Nawani, Director General of Police
(T.C.) Gujarat State, Ahmedabad.

2. Letter No.HBA-1074-4511-B dated
8-10-1985 from Home Department,
Gandhinagar addressed to Accountant
General, G.S. Rajkot and copy to
P.G.Nawani.

3. Letter No.Gratitude/HBA/1 dated
30.10.1985 from P.G.Nawani addressed to
the Home Department, Gandhinagar.

4. Letter No.HBA-1074-4511-B dated
17.7.1986 from Government ~~mg~~ of Gujarat,
Home Department addressed to P.G.Nawani.

Sir,

The facts and evidence mentioned in the
above referred to correspondences clearly show and
establish that this D.O.letter dated 26th February,1985
reveals that there has been a criminal conspiracy to
fabricate false evidence even though the true facts
were known and framing of an incorrect record and
writing by public servant (s), knowing the same to
be incorrect with ~~x~~ intent to cause injury to me

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and defame me, and despite again pointing out the correct and true facts, still there has been persistence on the part of the Government and the concerned person (s) not to see the path of truth, thus showing determination to persist in the same.

2. I, therefore, once again request and call upon you to abide by and follow the true and correct facts known to you and on record and

(i) to cancel and withdraw this D.O.

letter No. IPS-1079-6374-B dated

26.2.1985.

(ii) to express regret of the Government of Gujarat for having done the same and written this D.O. dated 26.2.1985.

(iii) to obtain and send written apology

of Shri M. Sivagnanam for having

written this D.O. dated 26.2.1985, and

(iv) to take action against all the

person(s) responsible for committing

these offences.

3. Please take note to reply within one

month from receipt of this letter by you, by registered post A.D. on Ahmedabad and Bombay addressed ^{u/s} simultaneously

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If no reply is received within this period, it would be presumed that you do not want to reply and criminal and civil actions, as permissible under the law of the land, would be taken, which kindly note.

4. Please acknowledge receipt of this letter.)

(4) Not having received any satisfactory reply, this application running to 83 pages, accompanied by 34 enclosures running to another 190 pages has been filed seeking the ~~xx~~ following reliefs:-

" In view of the facts narrated in the foregoing paras, the applicant prays for the following reliefs :-

A. To direct the respondent State of Gujarat and other respondents jointly and severally to pay amount of rupees five lakhs as damages to the applicant.

B. To direct (if so deemed fit) the respondent State of Gujarat to recover (after first making full payment to the applicant) the entire amount of rupees five lakhs or whatever amount the Hon'ble Tribunal deems fit to direct, from Sarvashri Madhavsinh Solanki, Prabodhbhai Raval and M. Sivagnanam so as to fix ACCOUNTABILITY on the wrong doers in the interest

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tax payers' money.

C. To award cost of this application to the applicant.

D. To grant any other and further reliefs as may be deemed just and proper in the interest of Justice."

4. The respondents have filed their replies contesting the maintainability of the application, on various grounds. After hearing the parties, the application^X was admitted on 2.12.1987 because the Bench felt that the communication of displeasure, though not a penalty, gave a cause of action to the applicant.

5. This case was heard finally on 19th October, 1992. The applicant argued his case. The respondents were represented by counsel.

6. It necessary to make it clear at the outset that the purpose of the application is clearly mentioned in para 3 (iv) of the application wherein it is made clear that it relates to the "recovery of damages of Rs.5 lakhs for injury caused to the applicant by the respondents" by the issue of the Annexure -1 D.O.letter " which was written with intent to defame degrade, insult, humiliate and lower the applicant and his family and his descendants, socially and

otherwise in the eyes of the public in general, colleagues and the Police Force, as an officer and person who is untrustworthy who had deceived Government and got ~~me~~ big amount of Rs.50,000/- (half a lakh) sanctioned by fraudulent misrepresentation and improperly withdrew this Government money without even executing the pre-requisite required agreement (a condition precedent) before withdrawing the Government money and then diverted this money to another unauthorised purpose and use, thus wrongly and improperly misappropriated the amount, thus lacking in propriety, unrightness and honesty."

7. When the case came up for final hearing, the applicant was asked to state how this application could be maintained when he had not impugned the Annexure 1 letter which is alleged to have caused him ~~ed~~ injury ^{ed} him and defamed him and why he had not taken steps to make a suitable representation to the authorities concerned for recalling this offensive letter. He could not give us any satisfactory reply.

8. The applicant is not an ordinary government employee. He was holding the highest position available to a Police Officer. It is not as if he is not aware of the provisions of law. If he had any grievance against the Annexure 1 letter he ought to have first represented to the Chief

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Secretary pointing out the full facts to him

and contended that there was no basis for

communicating Government's displeasure and

requested him to recall the impugned letter

as it was not based on facts. The record shows

that a 2 page letter (Annexure 33) was sent to

the Chief Secretary on 20th August, 1986. That

letter has been reproduced in para 3 above.

This obviously, is not a proper representation,

because it does not show how the Annexure 1

letter is wrong on facts. That apart, this is

about 18 months after he received the Annexure 1

letter.

9. It is to be noted that the applicant makes

demands in the Annexure 33 letter for an apology

etc., without first laying the ground for it.

10. The learned counsel for the respondents

argued that unless the Annexure 1 letter is

impugned, that letter will have to be considered

to be a legally valid letter. It was contended

that such a legal letter cannot be the subject

matter of a complaint by the applicant in proceedings

before this Tribunal because, he can have no grievance

against such a letter.

11. The learned counsel for the Union

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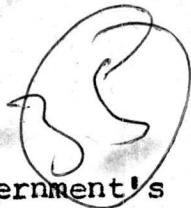
of India, also pointed out that the O.A. 205/88 filed by the applicant in respect of the same Annexure 1 letter of the Chief Secretary dated 26.2.1985 has been dismissed on 6.6.1989 and he contended that the present applicant was barred by constructive resjudicata. He has produced a copy of that judgment for our perusal which is placed on the file.

11. We shall first take the question of constructive resjudicata. The judgment in O.A. 205/88 shows that the O.A. was filed in connection with the same Annexure 1 letter of the Chief Secretary dated 26.2.1985. The prayer there was to direct the government to grant sanction to prosecute the three respondents therein who are also respondents in this O.A. We however, notice that in point of time, the present application filed in 1987 is anterior to O.A. 205/88 which was registered in 1988 only and therefore, a plea of constructive resjudicata cannot be taken.

12. However, we are satisfied that the present application has no merit and it is to be dismissed following reasons :-

1. The applicant has retired on

28.2.1985. The Annexure 1 letter



merely communicated Government's

displeasure to the applicant. This

letter had not visited him with any

civil consequence. In any case,

if, this letter had to be quashed

the applicant should have ~~make~~ made

a representation to Government within

a reasonable time. The letter dated

28.10.1986 letter to the Chief

Secretary, after 18 month's makes

the matter state considering that

a limit of one year is prescribed

for preferring an application before

this Tribunal from the date on

which the cause of action arose.

2. We notice that he had not made any

effective representation to Government

in as much as he had not informed

either the Chief Secretary or

Government how the four facts mentioned

in the Annexure 1 letter are

incorrect and how the displeasure

communicated is ~~un~~ justified. In

fact the Annexure 33 letter is not a

speaking representation on which government could be expected to take any action.

3. Thirdly, the applicant has not impugned the Annexure 1 letter. Therefore, that letter continues to remain in force.

Such a letter which the applicant has chosen not ~~is~~ to impugned cannot be considered to inflict any injury on the applicant.

4. Fourthly, the Annexure 1 letter is a confidential letter meant for the applicant ~~alone~~ perused only and no publicity has been given to it by the respondents to justify the allegation that the applicant has been defamed and cannot be considered to be defamatory.

5. Fifthly, the inferences which the applicant has sought to draw from this letter in the extract reproduced in para 6 subpara do not necessarily

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follow from this letter. The Ann.1

only points out to certain irregu-

larities communicated.

6. Lastly, the Annexure A-1 letter has no other civil consequence.

13. For these reasons we are satisfied that

the applicant has not made out any case that he has

a grievance relating to a service matter while he

was in the service of the first respondents. In the

circumstances, the question of considering any relief

to him does not arise. We therefore, dismiss this

application but without any order as to costs.

Reed

(R.C.BHATT)
MEMBER (J)

14-12-1992

N.V.KRISHNAN
14/12/92

(N.V.KRISHNAN)
VICE CHAIRMAN

14-12-1992

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