
(1991) 12 GUJ CK 0001
In the Gujarat High Court

Champaklal Hargovinddas Shah

APPELLANT

Vs

Valod Nagar Panchayat and Others

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Gujarat Civil Services Tribunal Act, 1972 — Section 10, 11, 11(1), 2(h)

Citation : (1993) 1 GLR 202

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioner seeks to challenge the impugned order dated 28th September, 1979 at Annexure "I" to the petition by which the petitioner was serving as Octroi Clerk in Valod Gram Panchayat was ordered to be dismissed on the basis of the enquiry, which was held against him on the charges of misappropriation. In the alternative the petitioner has prayed for a direction on the Gujarat Civil Service Tribunal - the Third respondent to decide the appeal of the petitioner on merits.

2. It appears that the impugned order dated 28th September, 1979 was earlier challenged before this Court in Special Civil Application No. 3430 of 1979 and this Court holding that because of striking down of the Amendment Act by which the Gujarat Panchayat Acts was sought to be amended, the appeal did lie to the Tribunal and the petitioner was entitled to prefer an appeal to the Tribunal. This Court therefore (N. H. Bhatt, J.) gave a direction dated 13-2-1984 to the petitioner to prefer an appeal before the Tribunal and also gave a direction to the Tribunal to give top priority to the appeal and dispose of in accordance with law.

3. It appears that pursuant to the direction given by this Court, an appeal was preferred by the petitioner on 22nd February, 1984 before the Gujarat Civil Services Tribunal against the decision dated 28th September, 1979 of the Village Panchayat, Valod, dismissing him from service. The Tribunal found that first appeal would not lie against the decision of a Village Panchayat before the Tribunal and this fact was not brought to the notice of the High Court. The

petitioner had earlier filed an Appeal No. 202 of 1977 against the previous order of dismissal for the same incident and that appeal which was decided by the Tribunal on 20th May, 1978 was filed against the order of the Taluka Development Officer, which was set aside and the matter was remanded to the Village Panchayat to proceed afresh from the stage of recording of evidence. Thereafter, the disciplinary proceedings were taken up afresh for the same incident culminating in the Resolution dated 28th September, 1979, under which the Village Panchayat being the disciplinary authority dismissed the petitioner. It appears that before the Village Panchayat could pass its resolution dated 28th September, 1979, the petitioner kept on sending communications to the Tribunal which had remanded the matter and since there was an amendment in the Panchayat Act to the effect that the servants of Village Panchayat and Nagar Panchayat were not "Specified Civil Servants", the Tribunal had generally informed the petitioner in response to his letters that his appeal was already decided by the Tribunal and that in view of the amendment in the Act the Tribunal had no jurisdiction in such matters. It appears that the reply of the Tribunal dated 8-11-1979 torn out of its context was relied upon before this Court earlier. It appears that in any event such first appeal did not lie before the Tribunal against the decision of the Village Panchayat and it could be preferred only before the Taluka Development Officer. Since the Amendment Act was struck down by the Supreme Court, the employees of the Village and Nagar Panchayats continued to be "Specified Civil Servants" in respect of whom the Tribunal had jurisdiction. The Tribunal held that since it had no jurisdiction to hear the appeal directly from the order of the Village Panchayat the appeal ought to have been filed before the Taluka Development Officer, who was the immediate Superior authority. It was found that even though the rules were not re-amended pursuant to the striking down of the Amendment Act, under the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 applicable to Government Servants also the immediate superior authority was the Taluka Development Officer. Therefore, in any event, the appeal could not lie before the Tribunal. The Tribunal, therefore, directed that the Taluka Development Officer should give top priority to the appeal and dispose of in accordance with law, while ordering the appeal to be returned for presentation to proper authority.

4. It would appear from the provisions of Sections 10 and 11 of the Gujarat Civil Services Tribunal Act, 1972 that the Tribunal inter alia has jurisdiction to hear and decide appeals filed by "Specified Civil Servants" u/s 11. Section 2(h) defines "Specified Civil Servant" so as to mean persons who are or who have been members of the civil services of the State of Gujarat or of the Panchayat servants, but does not include persons who are or who have been Police Officers. Section 11(1) empowers the Tribunal to hear appeals by specified civil servants against orders or decisions in cases where the appeal lies under law to the State Government. It is, therefore, clear that no such appeal can be filed before the Tribunal, where it does not lie under law to the State Government. Admittedly, no appeal lies to the State Government directly against such decision of the Village

Panchayats dismissing an employee. It would appear that items 1, 2 & 3 which are mentioned in the Appendix under Rule 13 of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964, which provides for appeals against order of suspension or orders imposing penalties have been restored vide notification published in Gujarat Government Gazette Extraordinary Part 3I-A dated 24th August, 1985, page 78. Accordingly, where the disciplinary authority is the Gram Panchayat, which can impose any penalty, the first Appellate Authority would be the Taluka Development Officer and the second Appellate Authority would be the District Development Officer. Under Rule 20(3) of the said Rules, an appeal pending at the time or preferred after the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be passed in accordance with these rules and it is therefore clear that an appeal would lie before the Taluka Development Officer against the decision of the Gram Panchayat even if the order of dismissal was made by the Gram Panchayat before the re-insertion of; entires 1, 2 & 3 in Appendix to Rule 13(i) of the said Rules. By resorting to the provisions of Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971, the Tribunal came to the same conclusion. It appears that the Tribunal had to resort to the said Gujarat Civil Services (Disciplinary & Appeal) Rules because it decided the appeal on 8th June, 1984 prior to the reinsertion of items Nos. 1, 2 & 3 in the Appendix to Rule 13(i) of the Gujarat Panchayat Services (Disciplinary and Appeal) Rules. In any event, the Tribunal had no jurisdiction to hear any appeal against the decision of the Gram Panchayat dismissing an employee since no such appeal lies directly before the State Government. It appears that the provisions of Section 11 of the Gujarat Civil Services Tribunal Act, which empowers the Tribunal to hear appeal by Specified Civil Servants only cases where an appeal lies under law to the State Government, were not brought to the notice of the Court when it decided the earlier writ petition filed by the petitioner in Special Civil Application No. 3430 of 1979, in which directions were given by Hon"ble Mr. Justice N. H. Bhatt on 13-2-1984 that the appeal should be filed before, the Tribunal and that the Tribunal should decide the same by giving top priority to it.

5. This Court had directed that the appeal should be disposed " of in accordance with law and the Tribunal on examining the position of law had correctly come to the conclusion that the appeal did not lie before it in view of the provisions of Section 11 of the Tribunal Act. Since the directions given by this Court were per incurium as the relevant provisions of law were not brought to the notice of the Court, no Jurisdiction can be created in a Tribunal by such direction when it is absent under the statutory provisions. The Tribunal was, therefore, fully justified in holding that it had no jurisdiction in the matter and that the first appeal should be filed only before the Taluka Development Officer, against the impugned decision of the Gram Panchayat. The Tribunal, therefore, had not committed any error in exercise of its jurisdiction in passing the impugned order. It was tried to be contended on behalf of the petitioner that this Court should directly entertain the petition against the impugned order of the Gram Panchayat and should not

relegate the petitioner to the appellate remedy before the Taluka Development Officer as ordered by the Tribunal. It appears that the petitioner had failed in his attempt to invoke the extraordinary jurisdiction of this Court against the same impugned order in his earlier petition, which was disposed of on the ground that alternative efficacious remedy was available. In view of the availability of alternative and efficacious remedy against the impugned order, there is no reason to take a different view of the matter and"" it will be open to the petitioner to approach the appellate forum as directed by the Tribunal in its impugned order dated 8th June, 1984; This petition, therefore, deserves to be rejected. Rule discharged with no order as to costs.