
(1986) 02 GUJ CK 0012
In the Gujarat High Court
Case No : Special Civil Application No. 865/86

Shiv Kumar Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10, 2, 3, 4
Industrial Disputes Act, 1947 — Section 2

Citation : (1986) 2 GLR 1038 : (1987) 1 LLJ 386

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; S.B. Majmudar, J

Bench : Division Bench

Judgement

Gokulakrishnan, C.J.—The petitioner in this Special Civil Application has prayed for a writ of mandamus or any other appropriate writ to

quash and set aside the order of transfer of the petitioners as contained in the entry at Annexure "A" to the Special Civil Application. The learned

Single Judge before whom this Special Civil Application was placed for admission has referred the matter to the Division Bench in order to decide

the question of jurisdiction involved in this case.

2. After the constitution of the Administrative Tribunal for Central Government Staff by virtue of the Administrative Tribunals Act, 1985. It is felt

whether the petitioner herein is a railway servant or a servant belonging to the Armed Force of the Union. If the petitioner belongs to the Railway

Protection Force coming under the Indian Railways Act, 1890, naturally, the matter has to be placed before the Administrative Tribunal constituted

for the purpose of dealing with the disputes regarding the Central Government Staff. If the petitioner is treated to be a servant belonging to the

Armed Force of the Union, Administrative Tribunals Act, 1985, will not be

applicable in view of the provisions u/s 2 of Administrative Tribunals Act, 1985.

3. Mr. Patel, the learned counsel appearing for the petitioner, and also Mr. Bhatt, the learned counsel representing the Railways submit that the petitioner will definitely come under the category of the "armed force of the Union" and as such the Tribunal may not have jurisdiction to go in to the dispute raised by the petitioner herein.

4. It is clear from the Railway Protection Force (Amendment) Act, 1985 (No. 60 of 1985) which was enacted by the Parliament and received the assent of the President on 6th September 1985 that section 3 of the Railway Protection Force Act, 1957, got amended. Originally, section 3 of the Railway Protection Force Act, 1957, read as follows :

3. Constitution of the Force - (1) There shall be constituted and maintained by the Central Government a Force to be called the Railway

Protection Force for the better protection and security of railway property.

(2) The Force shall be constituted in such manner, shall consist of such number of superior officers and members of the Force and shall receive

such pay and other remuneration as may be prescribed.

By virtue of section 4 of the Amending Act (No. 60 of 1985), for the words "a Force", the words "an armed force of the Union" were substituted

in section 3. Thus, it is clear that the Railway Protection Force to which the petitioner belongs, is "an armed force of the Union" subsequent to the

amendment referred above. Section 10 of the Railway Protection Force Act, 1957, reads as follows :

10. Officers and members of the Force to be deemed to be railway servants :- The Inspector General and any other superior officer and every

member of the Force shall for all purpose be regarded as railway servants within the meaning of the Indian Railways Act, 1890, other than Chapter

VIA thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.

This cannot, in any way, take out the definition given in the Amended Act regarding the Railway Protection Force wherein it is stated that they will

be "an armed force of the Union". Section 10 will not, in any way, change the character of the staff of the Railway Protection Force being the

armed force of the Union except deeming them as railway servants within the meaning of the Indian Railways Act, 1890 for the purpose of

exercising powers conferred on Railway Servants by or under the Act. Thus, it is only for this limited purpose the officers and members of the

Railway Protection Force which is now an armed force of the Union are deemed to be railway servants.

5. Section 2 of the Administrative Tribunals Act, 1985, clearly stated as follows :

2. The provisions of this Act shall not apply to -

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) any person governed by the provisions of the Industrial Disputes Act, 1947, in regard to such matters in respect of which he is so governed;

(c) any officer or servant of the Supreme Court or of any High Court;

(d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof

or, in the case of a Union territory having a Legislature, of that Legislature.

Section 2(a) above referred to clearly states that the provisions of this Act shall not apply to any member of the naval, military or air forces or of

any other armed forces of the Union.

6. Thus, from the foregoing discussion, it is very clear that the petitioner who belongs to the Railway Protection Force comes under the category of

an armed force of the Union"" and as such, the provisions of the Administrative Tribunals Act, 1985, will not be applicable to him. If that be so,

there is no question of sending back the petition filed by him to the Administrative Tribunal and the said petition has to be dealt with on merits.

7. For all these reasons, we send back the Special Civil Application to the file of the learned single Judge for the purpose of disposal on merits.