

(1994) 03 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Appeal No. 632 of 1993

Vinod Krishna Kaul

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-03-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3

Citation : (1994) 2 AD 81 : (1994) 29 DRJ 95 : (1994) RLR 277

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Kailash Vasdev, Alapana Poddar, Vinita Salmi, E.X. Joseph, M.K. Singh and B. Babbar, for the Appellant;

Judgement

C.M. Nayar, J.

(1) This petition under Article 226 of the Constitution of India has arisen on the following facts, as stated hereunder:

(2) The petitioner joined Government service in the Indian Police Service, which is an All India Service in the year 1956. He retired from the service on superannuation on October 31, 1990. In September, 1985, he was selected and posted at the Centre from his parent cadre of Rajasthan State as Director (Training), Bureau of Police Research and Development under the Ministry of Home Affairs at New Delhi, in the grade of Inspector General of Police. He was appointed on December 28, 1988 as Director General, Bureau of Police Research and Development. New Delhi by the Ministry of Home Affairs.

(3) Respondent No.2 Shri S.A.Khan. IPS. worked in the post of Deputy Director (Training) Bureau of Police Research and Development. New Delhi for the period from June 12, 1987 to November 4, 1987. The petitioner at that time was the immediate superior of the said respondent in the office and also his T.A. Controlling Officer. The respondent submitted a Transfer traveling Allowance bill dated January 19, 1988, from New Delhi to Chandigarh, along with a certificate

by him certifying that the railway fares claimed for the classes in which members of his family travelled were actually paid. The Transfer T.A. Bill was put up before the petitioner on January 20, 1988 for according necessary sanction and approval for drawing and disbursing of the amount claimed therein. The petitioner has further stated that the original entries made at the instance of respondent no.2 in the said T.A. bill showed that he had travelled on November 6, 1987 by his own car from Delhi to Chandigarh and journey was made from Delhi to Chandigarh by rail in Ac 1st class by his wife and son on the relevant date i.e. November 14, 1987. The above said traveling Allowance bill was not accompanied by title railway tickets nor were the details of ticket numbers mentioned in the said bill to authenticate the factum of journey having been performed.

(4) The Joint Assistant Director of the Bureau, under the instructions of the Controlling Officer vide letter dated 28.1.1988/1.2.1988 requested respondent no.2 to either supply the ticket number or the train number or the name of the train so that the amount claimed in the T.A. bill could be verified and disbursed. The respondent no.2 sent reply vide letter dated February 12, 1988 admitting that his wife and son had travelled by his personal car, contrary to what has been mentioned in the said T.A. bill. The petitioner, as the Controlling Officer, accordingly, disallowed the claim and referred title matter to his immediate superior. Director General, Bureau of Police Research and Development (Head of the Department), who forwarded the same to the Ministry of Home Affairs for an appropriate action in the matter.

(5) The petitioner received an internal letter dated December 12, 1988, from the Director, Ministry of Home Affairs, New Delhi, suggesting that payment to respondent no.2 may be made in respect of transfer T.A. bill in question. The Joint Director with the approval of the petitioner then submitted a detailed reply dated December 15, 1988, bringing once again to the notice of the Director, Ministry of Home Affairs that the payment in respect of Transfer T.A. Bill by respondent no.2 could not be made as the claim was false. Certain other correspondence was exchanged which finds mention in the writ petition and the petitioner vide letter dated May 25, 1989 informed the Director, Ministry of Home Affairs, New Delhi that respondent no. 2 had not produced any document for the rail journey and he had mentioned and certified that his family had travelled by rail. The petitioner thereafter was asked by the Joint Secretary, Ministry of Home Affairs to send self contained report in the matter so that the departmental enquiry could be initiated against respondent 110.2. The petitioner 110.2 sent a self contained report in the matter in pursuance of the aforesaid Communication. It is further averred that respondent no.2 submitted a representation dated May 4, 1988, addressed to the Director General, Bureau of Police Research and Development, New Delhi as also the Additional Secretary, Ministry of Home Affairs, New Delhi, casting serious aspersions on the petitioner to create a defense in order to deter and pressurise the petitioner from not proceeding further in the matter against the alleged false claim pVigilenceut in by

respondent no.2. The then Director General, after calling for a reply from the petitioner rejected the aforesaid representation of the respondent.

(6) The petitioner again received a letter dated October 18, 1989, from the Director, Ministry of Home Affairs, wherein it has been mentioned that the draft charge-sheet along with necessary Annexures may be got prepared and sent at an early date as the Central Vigilance Commission had advised in the matter claiming false T.A. bill major penalty proceedings may be initiated against respondent no.2. The petitioner vide letter dated October 20, 1989, requested the above said Director that the disciplinary proceedings may please be dealt with in the Ministry as he himself was a witness in the matter and the delinquent officer was not serving under him. The enquiry was ordered to be held against respondent 110.2 by the President of India under Rule 8 of the All India Services (Discipline and Appeal); Rules, 1979, vide memorandum dated October 31, 1989. The respondent was directed to submit within 10 days of the receipt of the memorandum, a written statement of his defense and also to state whether he was desirous of being heard in person.

(7) Shri V.1. Velayudhan, Commissioner for Departmental Inquiry, Central Vigilance Commission, New Delhi, was appointed as the Inquiry Officer. The respondent no.2 did not submit any written statement and filed a suit for declaration on July 2, 1990 in the court of Subordinate Judge 1st Class at Hissar arraigning the Union of India through the Secretary, Ministry of Home Affairs, New Delhi and the petitioner herein as defendants to the effect that the transfer T.A. bill submitted by him was in accordance with the rules and the defendants be ordered to make payment of the said amount. The learned Subordinate Judge, Hissar vide order dated July 2, 1990, stayed the proceedings in the Inquiry till further orders. The said respondent also filed a complaint dated July 2, 1990, u/s 499 read with Section 500 of the Indian Penal Code against the petitioner in which the Chief Judicial Magistrate Hissar issued the process. The petitioner further informed by various letters, as mentioned in the writ petition, the Government of India to take appropriate steps to prosecute the case on his behalf as the evidence alleged against the petitioner related to period when he was in the service of Government of India and in respect of the actions done by him in discharge of his official duty. The Government of India did not reply to this communication and it is stated that the Government failed to declare its duties and obligations in respect of the petitioner. The petitioner was constrained to file Criminal Petition No. 9967-M of 1992 in the Hon'ble High Court of Punjab & Haryana at Chandigarh when in fact the Government of India was to take appropriate steps to defend the petitioner.

(8) The present petition has been filed by the petitioner for a writ in the nature of Mandamus or any other writ.. order or direction directing respondents 1 and 2 to defend the criminal case filed by respondent no. 2 and to defray all costs and expenses incurred by the petitioner in defending the said petition.

(9) Notice to show cause was issued to the respondents and subsequently Rule

was issued and the present petition was directed lobe heard on March 7, 1994. as item No. 1 subject to overnight part-heard vide order of the Division Bench dated February 18, 1994.

(10) The Union of India has filed affidavit of the Under Secretary (IPS), Ministry of Home Affairs and has raised the plea that in terms of Ministry of Home Affairs" O.M.No. 45/ 5/53-Estt (A) dated January 8. 1959 governing the defense/ reimbursement of proceedings filed by a private party against a Government servant in respect of matters connected with his official duties or position, the defense of such proceedings is undertaken by the Government itself on its discretion/consideration that doing so would be in public interest. In other cases of Government servant's defending the proceedings himself, he is to be reimbursed reasonably upon the conclusion of the proceedings in his favor on the basis of extent to which the Court vindicates his acts. Therefore, before any reimbursement is made to the petitioner the decision of the Court in either of the two cases filed by the petitioner in the Hon''ble High Court of Punjab & Haryana or the present case is to be awaited. title respondent no.2 has also filed his counter affidavit reiterating that the private criminal complaint filed by him before the Court of Chief Judicial Magistrate, Hissar, in no way arises out of the official transaction of the petitioner. The petitioner has also filed a Criminal Miscellaneous Petition in the Hon''ble High Court of Punjab & Haryana at Chandigarh and the said petition has already been admitted and further proceedings before the Chief Judicial Magistrate at Hissar have been stayed by the Hon''ble High Court.

(11) The learned counsel for the respondents has raised the preliminary objection that the present petition under Article 226 of the Constitution of India is barred in view of Section 28 of the Administrative Tribunals Act. 1985 (hereinafter referred to as the Act). In my view. this objection prevails.

(12) Section 14 of the Act provides that the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to, inter-alia, all service matters concerning a member of "All India Service". Reference may be made to sub clauses (b) and (c) of Section 14 which define the service matters. The Indian Police Service is an All India Service and it is only the Central Administrative Tribunal, which has jurisdiction to adjudicate the disputes raised in this writ petition. The relevant provisions of this Section read as follows:

"14.Jurisdiction, powers and authority of the Central Administrative Tribunal- (1) Save as otherwise expressly provided in this Act. the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to- (a)..... (h) all service matters concerning- (i) a member of any All-India Service: or (ii) a person not being a member of an All India Service or a person referred to in clause (c) appointed to

any civil service of the Union or any civil post under the Union: or (iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defense service or a post connected with defense: and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government; (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment. Explanation -For the removal of doubts, it is hereby declared that reference to "Union" in this sub-section shall be construed as including references also to a Union territory."

(13) Service matters are also defined in Section 3, which deals with the definitions. The relevant provision is sub clause (q) and the same reads as follows:

"(Q)"service matters"" in relation to a person, means all matters, relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects- (i) remuneration (including allowances), pension and other retirement benefits; (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation; (iii) leave of any kind; (iv) disciplinary matters; or (v) any other matter whatsoever;"

(14) The question in respect of the jurisdiction has been settled by the Supreme Court in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, . Paragraph 17 of the judgment reads as follows:

"WHAT, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court- not only in form and de jure but in content and de facto. As was pointed out in Minerva Mills, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on grounds of religion. race, caste, sex or place of birth. The touch-stone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centering around these articles in the Constitution a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act all the powers of the courts except those of this Court in regard to matters specified therein vest in the Tribunal- either Central or State. Thus the Tribunal is the substitute of title High Court and is entitled to exercise the powers thereof."

(15) Faced with the proposition that the present petition under Article 226 of the Constitution of India is barred, the learned counsel for the petitioner sought to distinguish the present case on the ground that the petitioner has since retired and the petition under Article 226 of the Constitution of India is maintainable. This submission is devoid of force. The claim raised by the petitioner flows from his actions as an officer of the Union of India and it has been reiterated that the case Filed against the petitioner related to his action taken in the due discharge of his official duty. The Act does not in any manner, distinguish the status of the working members of an All India Service from the retired officers. It cannot be argued that the officer who is still in service can invoke the jurisdiction of the Central administrative Tribunal whereas the retired officer is at liberty to approach this Court by means of petition under Article 226 of the Constitution of India. The Administrative tribunal being a substitute of the High Court has the jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions, which have been raised in the present petition. "Conditions of Service" will mean all those conditions, which regulate the holding of a post by a person from the time of his appointment and will also cover matters which may arise after retirement, such as, pension etc. (See State of Madhya Pradesh and Others Vs. Shardul Singh,).

(16) In view of the above, the writ petition shall be returned to the petitioner for presentation before the Central Administrative Tribunal in accordance with law. There ill be no order as to costs.