

N.C. Singhal Vs. Union of India

N.C. Singhal Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/683470

Court : Delhi

Decided On : Dec-19-1988

Reported in : ILR1988Delhi599

Judge : D.P. Wadhwa, J.

Acts : Administrative Tribunal Act, 1985 - Sections 3; [Code of Civil Procedure \(CPC\), 1908](#) - Order 7, Rule 10

Appeal No. : First Appeal No. 136 of 1987

Appellant : N.C. Singhal

Respondent : Union of India

Advocate for Pet/Ap. : D.S. Marwah,; Rajendra Dutt and ; S. Kohli, Advs

Judgement :

D.P. Wadhwa, J.

(1) This appeal by the plaintiff is against an order of the sub-judge, 1st class, returning his plaint fix presentation to a proper court, which would mean the Central Administrative Tribunal (for short 'the Tribunal').

(2) The plaintiff on 19-9-86 instituted a suit against the respondent-defendant. Union of India, through the Secretary Ministry' of Health and Family Welfare, for

recovery of Rs. 25,000/- because of certain tortious act of the defendant. On that account he alleged mental torture, loss of reputation- loss suffered by him on being lowered in the estimation of his colleagues and the loss suffered by him in defending certain disciplinary proceedings. The plaintiff had, in fact, assessed his damages at Rs. 1,00,000.00 but claimed only Rs 25,000.00 Plaintiff said he was an eye surgeon of renown and retired from Government service on 31-10-80. He was to be paid his retirement benefits in the first week of November, 1980, but these were paid only on 29-10-81, The plaintiff, therefore, filed a suit on 5-2-82 for Rs. 10,000.00 against the defendant on account of loss of interest suffered by him because of late payment. He said that in this suit the defendant pleaded that because of certain disciplinary proceedings against the plaintiff initiated under Rule 9(2) (a) of C.S. Rules, 1972. he could not be paid his retirement dues. He said that this was a false plea and this lowered him in the estimation of his colleagues and friends. Then the plaint set out nature of disciplinary proceedings starting with a charge sheet served on the plaintiff on 31-3-83 and his ultimate exoneration. The plaintiff said that the chargesheet was issued to him maliciously with the sole intention of defaming him. Thus, in brief the claim of the plaintiff for damages.

(3) The defendant filed an application under Order 7, Rules 10 and 11 and Section 151 of the Code of Civil Procedure (for short 'the Code') praying that the plaint be rejected or returned to be presented to a proper court. It was said that the departmental inquiry, which was the basis of the suit, was held for an act of omission by the plaintiff, he being a government servant while in service according to the law and the rules, it was further stated that the suit was not triable by a civil court as it related to service conditions of the plaintiff and could be tried only by the Tribunal. This application was allowed and so the appeal.

(4) The Tribunal was constituted by the Administrative Tribunals Act, 1985 (for short 'the Act'). The preamble of the Act reads as under :-

'AN Act to provide for the adjudication or trial by Administrative Tribunals of disputes and the complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 in pursuance of Article 323-A of the Constitution) and for matters connected therewith or incidental thereto.'

SECTION 3(q) defines 'service matters' in relation to a person, to mean all matters relating to the conditions of his service..... 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: There cannot be any dispute that the claim in the present suit would not fall under any of the Clauses (i) to (iv). The question is if it falls under clause (v), i.e. 'any other matter whatsoever'. For this purpose reference will have to be made to certain provisions, to the Act. Relevant would be Section 14 relating to jurisdiction, powers and authority of the Tribunal. Sections 19, 20 and 21 relating respectively to applications to Tribunals, bar of applications unless other remedies exhausted and limitation; Chapter V containing Section 28, (exclusion of Jurisdiction of courts). Section 29, (transfer of pending cases) and Section 29-A relating to provision for filing of certain appeals. Lastly is Section 33 which states that the Act is to have overriding effect.

(5) For one thing could it be said that the learned sub-judge could have returned the plaint to be presented to the Tribunal. This would appear to be contrary to the provisions of Order 7. Rules 10 and 11 of the Code. Rule 10 talks of return of the suit to be presented to the court in which it should have been instituted. Tribunal is not a court, though it has been conferred certain powers which are vested in a civil court, under the Code sub-section (3) of Section 22] The tribunal is not bound by the Code [Section 22(1)1. The proceedings before the Tribunal are no doubt deemed judicial proceedings within the meaning of Sections 193, 219 and 228

Indian Penal Code (Section 30) but that does make the Tribunal a Court. The learned sub-judge therefore erred in directing return of the plaint for presentation to the proper court, meaning the Tribunal.

(6) Under Section 14 the Tribunal has all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court in relation to recruitment and matters concerning recruitment and all service matters. Under Section 19(1) a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to it for the redressal of his grievance. There is an Explanation to this sub-section which explains as to what the 'order' means. It can be made either by the government or by an officer of the government (so far as the Explanation is relevant to the present case). This sub-section, therefore, assumes the existence of an order and it has to be read with Section 20. Sub-section (1) Section 20 says that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed all the remedies available to him under the relevant service rules as to redressal of grievances-

(A) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(B) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(7) Thus, for the Tribunal to exercise its jurisdiction, there has either to be a final order or the fact of their being pendency of appeal or representation not being disposed of within six months of the date of preferring the appeal or the representation. Section 20 provides as to how the limitation for filing an application before the Tribunal is to be calculated.

(8) It would, therefore, appear that the expression 'any other matter whatsoever' would encompass any matter in respect of which a person can get relief under the relevant service rule as to the redressal of grievances by filing representation or appeal'. If he cannot get any such relief, it could perhaps be said that the case would not come within the jurisdiction of the Tribunal with reference to clause (v) of Section 3(q) of the Act, it being not a service matter.

(9) In the present case could it be said that the plaintiff could get relief from the defendant by filing a representation or an appeal if there was no order on his representation. The answer would perhaps be 'no'. The claim in the present case arises out of tortious liability. It cannot be a service matter within the meaning of Section 3(q) of the Act. Clause (v) of Section 3(q) may appear to be of wide amplitude and I would even say its scope cannot be restricted to cases covered by clauses (i) to (v) but then I have not been shown any service rule by which a government servant can get a relief in a case like the present one. Then, can it be said if the government servant has availed of all the remedies available to him under the service rules as to redressal of his grievance before he could approach the Tribunal. There is no remedy for tortious liability under the service rules. Only civil court will, therefore, have jurisdiction in the matter. Moreover, it is settled proposition that exclusion of jurisdiction of a civil court to try a suit of Civil nature cannot be readily assumed.

(10) Reference was made to a bench decision of the Madras High Court in *Badrinath v. The Government of Tamil Nadu and Ors.* AIR 1986 Mad. 3 In this case the Chief Secretary of the State Government made some statement which the petitioner thought was defamatory of him. He, therefore, under Rule 17 of the All India Services (Conduct) Rules, 1968 sought sanction of the State Government to sue the Chief Secretary for defamation. Sanction was refused. The petitioner, therefore, filed a petition seeking an order of mandamus directing the State Government to grant necessary sanction. The High Court allowed the petition and issued a mandamus to the State Government to grant the petitioner the necessary sanction as required by Rule 17. On this basis it was argued that the plaintiff should first approach the government for the vindication of his grievance. I am afraid I cannot agree with this submission. Under Rule 17 referred to above 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 critical or attack of a defamatory character. This rule merely puts a bar on the member of the service in having recourse to the court without the sanction of the State Government, It is not that if there is a refusal by the State Government the matter has to be agitated before the Tribunal which may grant the requisite sanction. Then. after the sanction is granted the member of the service would have a second round in the Tribunal itself for his claim of damages. I do not think this would be the interpretation to be put on Rule 17. This decision in *Badrinath* (supra) is of no help to the appellant. In fact. I need not express any opinion if the refusal of the State Government to grant sanction is justiciable before the Tribunal or not as the question before me is only if a claim for damages arising out of a tortious liability for defamation is within the jurisdiction of a civil court or not.

(11) I would, therefore, hold that the present suit is triable by civil court. Whether the claim of the plaintiff is tenable or whether he has a cause of action to file the suit are however different matters to be decided by the court if any such issues arise. The impugned judgment is therefore, set aside No costs.