

Dr. H. Mukherjee

Vs

S. K. Bhargava

Civil Appeal No. 6973 of 1996

(B.P. Jeevan Reddy, S.C. Sen JJ)

09.04.1996

JUDGEMENT

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B. P. JEEVAN REDDY, J. :-

1. Leave granted.

2. The respondent-plaintiff and the appellant-defendant were working as Deputy Chief Controller of Explosives and Chief Controller of Explosives respectively in the Department of Explosives, Government of India and were stationed at Nagpur. The respondent instituted a suit, Special Civil Suit No. 996 of 1992, in the Court of Civil Judge, Senior Division, Nagpur praying for a decree in a sum of Rupees two lakhs against the defendant "as damages for the harassment meted out to the plaintiff and award costs of the suit with future interest at 10 p.c. p.a. from the date of the suit till realisation". In the plaint, it is alleged that the defendant deliberately and intentionally passed several orders and took several proceedings against the plaintiff, abusing his official position as the administrative superior of the plaintiff. It is submitted that the defendant passed those orders and took those proceedings mala fide and actuated by a vindictive attitude with a view to harass the plaintiff. It is also alleged that the defendant tampered the official record to involve the plaintiff in certain irregularities, all with a view to ensure that the plaintiff is not appointed to the post of Chief Controller to which he was selected by the Union Public Service Commission in the year 1987. The plaintiff's case is that the defendant was holding the post of Chief Controller on an ad hoc basis and that when the plaintiff was selected by Union Public Service Commission in 1987 for appointment to the post of Chief Controller on regular basis, he indulged in a course of action designed to mar and tarnish the record and career of the plaintiff so that he is not appointed to the said post pursuant to his selection.

3. On receiving the notice of the suit, the defendant-appellant filed a miscellaneous application to dismiss the suit for want of jurisdiction. He submitted that the Civil Court has no jurisdiction to entertain the said suit in view of the Administration Tribunals Act, 1985 [the Act] and the constitution of the Central Administrative Tribunal thereunder to adjudicate disputes relating to service conditions of the government servants. The defendant submitted that, if at all, such a suit can be entertained only by the Tribunal created under the said Act. This objection was overruled by the learned Civil Judge. He held that the plaintiff's suit does not pertain to service matters and that the suit is filed against the defendant in his individual capacity and not in his official capacity. The defendant preferred an appeal against the said order before the Bombay High Court [Nagpur Bench]. The learned Single Judge held that since the suit is filed for damages on account of alleged

tortious acts of the defendant which have caused the plaintiff mental pain and injury, the subject-matter of the suit does not fall within the jurisdiction of the Central Administrative Tribunal created under the Act. Accordingly, he dismissed the appeal - which order is challenged in this appeal.

4. The only contention urged by the defendant before the Civil Court - and which was reiterated before the High Court - is that in view of the constitution of the Administrative Tribunal under the provisions of the Act, the Civil Court has no jurisdiction to entertain the suit. We shall, therefore, confine ourselves to the said question alone. We shall proceed upon the assumption that it is a suit for damages for harassing the plaintiff and causing him mental pain and injury by the defendant who is supposed to have acted mala fide, with a vindictive attitude, and had also indulged in tampering of official record with a view to tarnish the record, image and career of the plaintiff. We shall also proceed on the assumption that such a suit is maintainable in law [Law of Torts]. The question is whether the suit of the present nature can be entertained by the Tribunal constituted under the said Act and whether on that account, the jurisdiction of the Civil Court is ousted.

5. Section 14 of the Act, which sets out the jurisdiction, powers and authority of Tribunals constituted under the Act, reads thus :

"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) recruitment, and matters concerning requirement, to any All India Service or to any civil service of the Union or a Civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) 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 defence services or a post connected with defence, 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.

Sub-sections (2) and (3) are omitted as unnecessary."

Section 28 declares that :

"On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any service or persons appointed to any Service or post, no Court except (a) the Supreme Court; or (b) any Industrial Tribunal, Labour Court or other Authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters".

The expression "service matters" occurring both in Section 14 and Section 28 is defined in Clause (q) of Section 3 in the following words :

"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."

6. The Tribunals under the Act are thus conferred with the exclusive jurisdiction, powers and authority exercisable immediately before the appointed day by all Courts [except the Supreme Court] in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of section 14. The question is whether the present suit does fall under any of the said clauses. We do not think that it does. The suit appears to be one based on alleged tortious acts of the defendant committed with a view to harass the plaintiff and cause him mental pain and injury. At this stage, it is not out province to say that whether the allegations are true or false. We have to take the plaint allegations as they stand. We also assume for the purpose of this appeal that such a suit does lie according to law since no contention to the contrary has been urged before us nor was urged before the Civil Court or the High Court. This is a pure action for damages for deliberately harassing the plaintiff by passing several vindictive and mala fide orders and proceedings and also by fabricating official records, Such a suit for damages is certainly not within the province of section. 14.

7. The appeal accordingly fails and is dismissed. Appeal dismissed.