

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 15th February, 2008

+ **WP(C) No.1153/2008**

Lt. Col. Sanjay Sitanshu
S/o Shri L.P.Yadav,
509 Army Base Wksp, Agra Cantt. Petitioner

Versus

1. Union of India
through Secretary, Ministry of Defence,
New Delhi
2. Chief of Army Staff
Army Headquarters
DHQ P.O.
New Delhi
3. General Officer Commanding
Convening Authority GCM
12 RAPID
C/O 56 APO
4. Colonel D.S.Dahiya
Presiding Officer, GCM,
65 Armoured Regiment,
C/o 56 APO ... Respondents

Advocates who appeared in this case :

For the petitioner : Petitioner in person

For the respondents : Ms.Jyoti Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

A.K. SIKRI, J (ORAL)

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1. The petitioner was appointed as Defending Officer for one Lt. Col. Harbans Singh of 614 EME Battalion. The said Lt. Col. Harbans Singh is facing General Court Martial (for short "GCM") proceedings and the petitioner is defending him in those proceedings. The GCM proceedings are still underway. In this petition filed by the petitioner, the petitioner has alleged that the GCM proceedings are not held in accordance with the provisions of Army Act and Army Rules as are applicable to such GCMs. In this behalf, inter alia, he alleged that his submissions before the open court are not being recorded, which is contrary to Army Rule 92. He further alleged that he had also made submissions as per Army Rules 39, 44, 49, 51 and 53 which were also not

considered. The petitioner, therefore, has approached this Court to quash the GCM proceedings being illegal and for direction to conduct the GCM in a legal and lawful manner in accordance with the provisions of Army Act and Army Rules.

2. The learned counsel for the respondents, at the outset, has taken two preliminary submissions to the maintainability of the writ petition. The first submission is with regard to the territorial jurisdiction of this Court. The locus standi of the petitioner to file such a petition is also challenged on the ground that it is the Lt. Col. Harbans Singh who would be competent to file any such petition as the GCM is convened against him. Insofar as the submission with respect to territorial jurisdiction is concerned, it is pointed out that no cause of action or even a part of cause of action has arisen within the territorial jurisdiction of this Court. It is pointed out that Lt. Col. Harbans Singh belongs to 614 EME Battalion which is located at Dehradun. It is further stated that the GCM is convened at Jodhpur.

3. We find merit in these submissions of the learned counsel for the respondents. Only because the Head Quarter of the Army is situated in Delhi would not confer jurisdiction on this Court.

This aspect is dealt with in detail by a Division Bench judgment of this Court in the case of *Ex.Rect./GD Vinod Kumar Vs. Union of India and Ors.* [135(2006) DLT 414]. After taking stock of the plethora of judgments of the Apex court as well as of this Court the Division Bench has culled out various principles governing the issue of territorial jurisdiction. Specific reference is made to the judgment of the Supreme Court in the case of *Kusum Ingots and Alloys Ltd. Vs. Union of India and Another* [2004 (6) SCC 254], wherein it is held that unless a cause of action or a part of cause of action arises within the territorial jurisdiction of the High Court, the high Court will not have jurisdiction to entertain the petition. The Supreme Court in the said judgment has gone to the extent of holding that even if the small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself cannot be considered to be the determinative factor compelling the High Court to decide the matter on merits. The Supreme Court also rejected the contention based on the location of the Central Government in Delhi as sufficient factor to confer the jurisdiction on this Court.

4. The petitioner submitted that he had approached the confirming authority, namely, the Chief of Army Staff under the provisions of Section 164 of the Army Act by making a representation dated 20th January, 2008 but no action is taken thereon till date. He submits that since the Chief of Army Staff is the competent authority to deal with any such representation under Section 164 of the Army Act, this Court will have the jurisdiction to issue directions to him. We would have been persuaded with such a submission but for the fact that in the present case, the representation under Section 164 of the Army Act lies to the Army Commander, South Western Command. It is only a petition under Section 164(2) of the Army Act, which would be a post confirmation petition after the conclusion of the GCM and in case any conviction/sentence is passed upon the accused, that would be maintainable before the Chief of Army Staff. Since in the present case, the proceedings are still not over and any order passed at this stage can be challenged under Section 164(1) of the Army Act alone, the Chief of Army Staff does not come into picture at this stage. This may not be the ground to confer the jurisdiction on this Court. Even if

the mandamus is to be issued directing the competent authority to pass appropriate orders on the representation of the petitioner, that competent authority is not the Chief of Army Staff.

5. The petitioner at this stage has raised another important issue which may need some consideration. His submission is that the Army officials who are posted to such battalions do not remain static inasmuch such battalions keep on shifting from one place to another and the officers attached to those battalions have also to move. In such a situation, he further submits that soldiers defend the frontiers of the country and take part in peace operations even when there is no war. There should not be any limitation of boundaries for such officers to seek their redressal. Insofar as filing of petition before a particular High Court is concerned. He submits that there may be a possibility that the Court Martial Proceedings take place where a particular officer is posted e.g. Jammu and Kashmir and thereafter, he may be transferred to a faraway place, such an officer cannot be forced to go to Jammu and Kashmir to file the petition. As pointed out above, there may be some force in this submission. We

appreciate the difficulty faced by such officials. If an aggrieved official is forced to go to a distant place to seek his remedy, it may be an impossible task for him as it would involve not only travelling to a distant place repeatedly, but huge expenditure which he may not be able to afford. It may amount to negation of access to justice, which is the right of every citizen of this country. This is more so when with the laudable object of 'justice at doorstep' in mind various measures of other kinds are being taken. There is thus a need to make appropriate amendment in the Rules or Act to confer necessary territorial jurisdiction. We may point out that there already exists a provision to this effect in the Rules framed under the Administrative Tribunals Act, 1985. Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 provides as under:

“6.Place of filing applications – (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction –
(i) The applicant is posted for the time being, or
(ii) The cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

It would be, therefore, for the legislature to take care of this hardship faced by such officials and make appropriate provisions in this regard. The Parliament has already enacted the Armed Force Tribunal Act, 2007. The feasibility of framing similar rule under that Act may be examined by the Central Government/Legislature.

7. The position in law as it stands today would compel us to hold that we do not have territorial jurisdiction to entertain the present petition. We, therefore, dismiss this petition on this ground leaving the petitioner to approach the appropriate High Court for redressal of his grievance.

8. A copy of this order be given dasti to the petitioner.

A.K. SIKRI, J.

February 15, 2008
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J.M. MALIK, J.