

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16365 of 2009

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No.041707679, Ex-CT/GD Awtar Yadav of E/170 Bn CRPF, resident of village. &
P.O. Ghatwari, P.S.- Dharhara, Distt.- Munger

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Home Deptt., Central Government, 104, North Block New Delhi Pin-Code 110001
2. The I.G.P. C.R.P.F., Eastern Sector, Salt Lake, Kolkata- 106, West Bengal (No. R. XIII- 3/2009-ES-EC-III)
3. The D.I.G. Police, C.R.P.F. Siliguri (West Bengal), State- West Bengal
4. The Commandant 170/Bn C.R.P.F. (Namely Sanjeev Roy Itanagar, Arunachal Pradesh- 791111)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Onkar Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 28-04-2017

Heard Sri Onkar Singh, learned counsel for the
petitioner and Sri Anjani Kumar Sharan, learned Central
Government Counsel.

2. The petitioner, invoking writ jurisdiction of this
Court under Article 226 of the Constitution of India, has prayed for
following relief:

- (i) For his reinstatement as Constable in Central
Reserved Police Force where from the date he has
been terminated.
- (ii) For arrears of salary and other financial
consequential relief.
- (iii) For setting aside the order dated 4.3.2009 passed by
the I.G.P., C.R.P.F. ES, Salt Lake, Kolkata, 106,



West Bengal.

- (iv) For any other relief/reliefs as your Lordships may deem fit and proper.

3. While filing the writ petition, the petitioner had not brought on record even the order of the disciplinary authority, whereby the petitioner was dismissed from service. However, subsequently, a supplementary affidavit was filed and along with supplementary affidavit, the petitioner has brought on record the order of the disciplinary authority i.e. order dated 09.10.2007, whereby the petitioner in the departmental proceeding was held guilty and order for his removal from service was passed, as Annexure-3 to the supplementary affidavit.

4. At the very outset, a preliminary objection was raised by Sri Anjani Kumar Sharan, learned Central Government Counsel on the point of maintainability of the writ petition. According to Sri Sharan, learned Central Government Counsel, no cause of action arose within the territorial jurisdiction of this Court. He submits that in absence of any cause of action, in view of provision contained under Articles 226(1) and 226(2) of the Constitution of India, the writ petition is not maintainable. After preliminary objection was raised, learned counsel for the petitioner tried to persuade the Court that some of cause of action arose within the territorial jurisdiction of this Court.



5. It has been argued that the petitioner was appointed as GD Constable in Central Reserved Police Force, He joined on 26.07.2004 and was sent for training to Orissa. Finally, while he was posted at Itanagar, Arunachal Pradesh, on 15.09.2006, his Deputy Commandant received a telephonic information from the native place of the petitioner regarding death of his father and, thereafter, the petitioner was granted 15 days leave from 16.09.2006 to 30.09.2006, It was orally submitted by learned counsel for the petitioner that immediately after grant of leave, he rushed to his native place in the district of Munger (Bihar) and after coming to his native place, he noticed that earlier incorrect information was given and his father was alive but was in comma. Learned counsel for the petitioner has further orally submitted that immediately after noticing regarding condition of his father the petitioner informed his Commandant regarding the fact, but in the meanwhile, he developed some ailment and before the date of joining as per sanction of leave, on 21.09.2006, he sent an information to the authority concerned regarding his ailment. Learned counsel for the petitioner has admitted that the petitioner was never granted any extension of leave, but from time to time the petitioner gave information. Such information was given on 21.09.2006, 28.09.2006 and 20.10.2006. However, on 09.10.2006



itself, the Commanding Officer from Itanagar issued a letter to the petitioner with direction to join immediately. The petitioner on 15.10.2006 again informed regarding his ailment. On 23.10.2006, the Commanding Officer again sent communication with a direction to the petitioner to report immediately at Itanagar. However, according to learned counsel for the petitioner, since the petitioner was still unwell, on 03.11.2006, he requested for extension of leave. It has been admitted that no extension was granted. In the meanwhile, on 25.01.2007, the petitioner was declared deserter. It has been argued by learned counsel for the petitioner that on 26.02.2007 the article of charge in the proposed departmental proceeding was sent to the native place of the petitioner i.e. at Munger in the State of Bihar. After receipt of the said communication on 05.04.2007, the petitioner reported at Itanagar and thereafter on 09.04.2007, the order of desertion was recalled and departmental proceeding was initiated against the petitioner. It has also been accepted that even after initiation of departmental proceeding at Itanagar, again on 11.04.2007 without any authorization or permission the petitioner left Itanagar and after about one month on 06.05.2007, he again reported at Itanagar. According to learned counsel for the petitioner, the departmental proceeding, thereafter, continued from 08.05.2007 and finally,



while the petitioner was at Itanagar, the disciplinary authority passed an order on 09.10.2007, and he was served with the order of punishment at Itanagar itself. Learned counsel for the petitioner submits that entire proceeding was initiated in English language. It has also been admitted that after the order of punishment i.e. removal from his service, which was served at Itanagar, the petitioner under the provision of C.R.P.F. Rules, 1955 preferred an appeal before the D.I.G.P, who was posted at Siliguri, West Bengal. His appeal was dismissed by the D.I.G.P and thereafter, he preferred a revision petition before the I.G.P, Kolkata, which too was rejected. It was submitted by learned counsel for the petitioner that the order of the appellate authority as well as the revisional authority was communicated to the residential address of the petitioner at Munger and, accordingly, he has taken plea that since the order of the appellate authority as well as the revisional authority was communicated and served on the petitioner at Munger, it is a case of showing part of cause of action arose within the territorial jurisdiction of this Court. Thereafter, the petitioner has approached this Court invoking its writ jurisdiction.

6. Primarily, the writ petition was required to be rejected on the ground that in the writ petition, the petitioner himself had not made any prayer either for setting aside the order of



his removal or for setting aside the order of the appellate authority, save and except making prayer for issuance of direction for reinstatement as well as quashing of order of the revisional authority. Since objection on the point of territorial jurisdiction was raised, this Court is not recording any opinion on the merit of the case. In view of submission made by learned counsel for the petitioner, it is evident that save and except communication of charge, which was sent to his residential address at Munger, there is nothing on record to suggest that any cause of action arose within the territorial jurisdiction of this Court. Moreover, in the present writ petition, the petitioner has not made any prayer for setting aside the Memo of Charge. It is admitted fact that dismissal order of the petitioner was passed at Itanagar, the appeal was rejected by the D.I.G.P., C.R.P.F., posted at Siliguri and revision, too, was rejected by the I.G.P., Kolkota (West Bengal). Meaning thereby that so far punishment order is concerned, no cause of action arose within the territorial jurisdiction of this Court.

7. Sri Anjani Kumar Sharan, learned Central Government Counsel, raising objection on the point of maintainability of the writ petition in view of lack of territorial jurisdiction, has placed reliance on a division Bench Judgment of this Court reported in **1983 PLJR(DB) 54; Nand Kishore Singh**



Vs. the Union of India & Ors. and one recent Judgment of a Single Bench, reported in **2016 (3) PLJR 870; Sunil Kumar Yadav Vs. The Union of India & Ors.** According to Sri Sharan, entire departmental proceeding was initiated at Itanagar and no cause of action arose within the territorial jurisdiction of this Court.

8. Besides hearing learned counsel for the parties, I have perused the materials available on record. Fact remains that the entire departmental proceeding continued at Itanagar. After receipt of the enquiry report of the enquiry officer, disciplinary authority has passed order for removal and the same was issued and served on the petitioner at Itanagar. Thereafter, appeal was preferred before the D.I.G., Siliguri (W.B.) which was rejected and his revision was also rejected by the I.G.P, C.R.P.F., Kolkota (West Bengal). Long back in the year 1983 itself, the Division Bench of this Court has held that merely on the ground that the order of dismissal or the order of the appellate authority was communicated at the residential address, same does not create any jurisdiction or any cause of action . At this juncture, it would be appropriate to quote paragraph-11 of Nand Kishore Singh's case (supra), which is as follows:

“11. Examining the facts of the present case, however, it is clear that consequence of the order of dismissal of the petitioner and his removal from the service took place at



Naya Nangal itself and the petitioner when returned to his village home, came as dismissed employee, having no claim whatsoever in the service, except a right to prefer an appeal. Simply, therefore, the filing of an appeal from his village home where the petitioner might have chosen to proceed after his dismissal in our opinion did not or should not furnish any part of the cause of action to clothe the High court of that place the territorial jurisdiction to exercise any of the powers under Clause (1) of Article 226. Such a view in our considered opinion appears quite reasonable and proper. As otherwise it would expose the authority or a Government to the vagaries of a disgruntled employee to compel them to defend the action that he may choose to bring at a place far away from its seat or place of residence. Such an interpretation in our opinion instead of serving the intention and spirit of Clause (2) of Article 226 may lead to great injustice and hardship to them. Be that as it may we feel our inability to accept the contention that the act of merely filing an appeal against an adverse order, which has been already carried out, should be deemed to be a part of the cause of action for choosing the forum for filing an application under Article 226 of the Constitution of India.”

9. It would also be appropriate to quote Articles 226 (1) and 226(2) of the Constitution of India, which is as follows:

“226. Power of High Courts to issue certain writs—(1)Notwithstanding anything in article 32[***], every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including



in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

10. On perusal of the aforesaid provision, it is evident that the High Court can exercise writ jurisdiction if the cause of action wholly or in part arises within its territorial jurisdiction. If the Court is satisfied that no cause of action arose within its territorial jurisdiction, then in that event, the High Court shall refrain from interfering with the matter. In the present case, on the basis of the fact, as noticed herein above, the Court is satisfied that for exercising jurisdiction in the matter, no cause of action arose within the territorial jurisdiction of this Court. Even if it is accepted that the order of the appellate authority or revisional order was communicated within the State of Bihar, it does not create jurisdiction. Accordingly, this Court lacks its territorial jurisdiction to entertain this petition.

11. Accordingly, the writ petition stands dismissed



on the ground of preliminary objection raised by learned Central
Government Counsel.

NKS/-

(Rakesh Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	03.05.2017
Transmission Date	

