

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25650 of 2013

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Navin Kumar Singh S/O Late Saryug Singh Resident Of Village- Khorampur,
Post- Chakamgola, P.S- Desari, District- Vaishali (Bihar)

... .. Petitioner/s

Versus

1. The Union Of India
2. Director General Of Indo Tibetan Border Force, C.G.O. Complex Block No. 2, Lodi Road, New Delhi.
3. D.I.G.Sector, Indo Tibetan Border Force, Patna At R.P.S More, P.S- Danapur, District- Patna
4. Commandant, 40th Indo Tibetan Border Force, Shukrhuttu Comp. Ranchi (Jharkhand).
5. Dandpal, 40th Indo Tibetan Border Force, Shukrhuttu Comp. Ranchi (Jharkhand)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Advocate.
For the Respondent/s : Mr. Anshuman Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 05-12-2018

I.A. No. 335 of 2015

1. The writ petition bearing C.W.J.C. No. 25650 of 2013 was initially filed for seeking extension of the period of earned leave of the petitioner but during the pendency of the writ petition, the petitioner who had been serving as a Cook with the Indo Tibetan Border Force and was posted at Ranchi (Jharkhand) was dismissed from service by Order No. 1-26012/40vi/stha-1/Anu/Navin Kumar Singh/2014-1731-40 dated 18.03.2014.

2. The aforesaid order by which the petitioner has been dismissed is also now sought to be challenged and for the aforesaid purpose, the present interlocutory application



has been filed whereby a request has been made for amending the prayer in the main writ petition as well as for challenging the aforesaid order of dismissal as well.

3. Mr. Anshuman Singh, learned advocate for the respondents has raised a preliminary objection of territorial jurisdiction of this Court and has submitted that before the prayer made in the interlocutory application be allowed, the issue of territorial jurisdiction be first decided. He has urged that since the petitioner was working at Jharkhand and during the period of leave, he was dismissed from service, the jurisdiction would lie only before the Jharkhand High Court and not before this Court.

4. The learned counsel for the petitioner/applicant however has rebutted the aforesaid contention and has drawn the attention of this Court to the fact that the order of termination clearly indicates that the same was served upon the petitioner at his residential address, which falls within the territorial jurisdiction of the State of Bihar.

5. Article 226 of the Constitution of India reads as hereunder:

48. Article 226 of the Constitution of India reads as hereunder:-

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 exercise 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, prohibitions, 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.

(3).....

(4)....."

6. A bare reading of clause (2) of [Article 226](#) of the Constitution of India makes it very clear that even if a small fraction of a cause of action accrues within the jurisdiction of a Court, that Court will have jurisdiction in the matter.

7. Article 226 of the Constitution of India has undergone a change with the amendments in the Constitution. When it was originally enacted, there were only two fold limitations on the territorial jurisdiction of the High Courts. The first was that the power could be exercised by a High Court throughout the territories in relation to which it exercised jurisdiction and secondly, the person or authority to whom writ would be issued, must be within those territories i.e they must be amenable to its jurisdiction either by residence or location within those territories.



8. Later, with the amendment in the Constitution, sub Clause (2) of Article 226 was added which clarified that if a cause of action, wholly or in part, arose within the jurisdiction of such High Court, the powers could be exercised in an unfettered manner. Thus, "cause of action" became a ground for conferring jurisdiction on High Court under Article 226 of the Constitution of India and it became one of the necessary considerations while entertaining a writ petition. An attempt also was made to explain and define as to what would constitute the "cause of action".

The classic definition of the expression "cause of action" was espoused by Lord Brett in *Cooke vs. Gill*, (1873) 8 CP

"Cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court."

9. Later, in [Kusum Ingots & Alloys Ltd vs. Union of India and Anr](#), (2004) 6 SCC 254 it was clarified as hereunder:-

"Cause of action" implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. "Cause



of action" is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

10. In the aforesaid case (Kusum Ingots & Alloys Ltd Supra) the appellant company was registered at Mumbai and had obtained loan from SBI, Bhopal branch. A notice was issued to the appellant company for repayment of the loan from Bhopal, in terms of the provisions of Securitization and Reconstruction of Financial Assets and [Enforcement of Security Interest Act](#), 2002. The vires of the Act was challenged before



the Delhi High Court by the appellant which was dismissed on the grounds of lack of territorial jurisdiction. It was urged by the appellant company that for testing the constitutionality of a [Parliamentary Act](#), the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The Supreme Court was, therefore, looking into the question as to whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. The challenge was repelled by the Supreme Court by holding that a Parliamentary legislation after receiving the assent of the President of India and its publication in the Official Gazette applies to the entire territory of India. If passing of a legislation gives rise to a cause of action, the writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It was held that the constitutionality of a Parliamentary act shall not be maintainable only in the High Court of Delhi because of the seat of the Union of India being in Delhi. It was, therefore, held as hereunder:-

"When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of



action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

11. With regard to forum convenience i.e the convenience of the parties, the Supreme Court in *Kusum Ingots & Alloys Ltd (Supra)* held as follows:-

We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [[See Bhagat Singh Bugga v.Dewan Jagbir Sawhney](#) [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , [Madanlal Jalan v.Madanlal](#) [(1945)



49 CWN 357 : AIR 1949 Cal 495] , [Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage \(P\) Ltd.](#) [1997 CWN 122] , [S.S. Jain & Co. v. Union of India](#)[(1994) 1 CHN 445] and [New Horizons Ltd. v. Union of India](#) [AIR 1994 Del 126]"

12. [In New India Assurance Company Ltd vs. Union of India and Ors](#), AIR 2010 Delhi 43 (FB) a Full Bench of the Delhi High Court had an occasion to look into as to what would give territorial jurisdiction to a Court. In the aforesaid case, a learned Single Judge of Delhi High Court had dismissed the writ petition on the ground that significant part of the cause of action had not arisen within the territorial jurisdiction of Delhi and only because the order under challenge had been passed by an appellate authority located within the territorial jurisdiction of Delhi, that would not be sufficient for conferment of jurisdiction. The aforesaid decision of the learned Single Judge travelled to the Division Bench from where a reference was made to the Full Bench. In the aforesaid case, the Full Bench, after taking into account various decisions rendered by the Supreme Court and other High Courts, held that even at the place where a part of cause of action arose, it would be open to a litigant, who is the dominus litis to have his forum convenience. However, it was held that the remedy



under Article 226 being discretionary, the Court could refuse to exercise jurisdiction when jurisdiction had been invoked mala fide. Thus, what was held in New India Assurance (Supra) was that that it matters not if only an insignificant or minuscule part of the cause of action has accrued within the jurisdiction of the court and cause of action accrues when appellate or revisional authority falls within the territorial jurisdiction of a particular High Court. Thus the Full Bench decided that since the appellate authority in that case was situated in New Delhi, the Delhi High Court had the jurisdiction under Article 226 of the Constitution of India and that the principle of "forum convenience" cannot be invoked to refuse the exercise of jurisdiction.

13. The full bench judgment in New India Insurance (Supra) came up for further consideration before a special bench of Delhi High Court in M/s.Sterling Agro Industries Ltd vs. Union of India & Ors, ILR (2011) VI Delhi 729.

14. A five Judges bench of Delhi High Court, by taking into account all the case laws on the subject of jurisdiction and forum convenience, formulated its conclusions as follows:-

"In view of the aforesaid analysis, we are inclined to modify the findings and conclusions



of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum convenience.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. [(2007) 11 SCC 335].

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is



situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Adani Exports Ltd. [(2002) 1 SCC 567].



(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

15. Thereafter, in [Vishnu Security Services vs. Regional Provident Fund Commissioner](#), 2012 (129) DRJ 661 (DB), one of the members of the Special Bench in M/s.Sterling Agro Industries Ltd (Supra), namely Hon"ble Mr.Justice A.K.Sikri further explained the judgment in M/s.Sterling Agro Industries Ltd (Supra). In the aforesaid case, Vishnu Security Services, a proprietorship concern was having its office in Gujarat which was allotted a particular code by the employees Provident Fund Commissioner. Later, the business was shut down but the Provident Fund code had not been surrendered by the aforesaid establishment. So the proprietor of the establishment received summons from the office of the Regional Provident Fund Commissioner, Gujarat directing him to



appear in person before it. On his appearance and rendition of the explanation that the business had been shut down, he was directed to pay the provident fund dues.

Aggrieved by the aforesaid order, he preferred an appeal before the Appellate Tribunal located in Delhi, which too was dismissed. Against the aforesaid judgment of the Appellate Tribunal, the establishment preferred a writ petition before the Delhi High Court but the same was dismissed by a learned Single Judge on the ground of territorial jurisdiction. The learned Single Judge was of the view that merely because the situs of the appellate Tribunal was in Delhi, the Delhi High Court will not have the jurisdiction to decide the writ petition. The aforesaid order by the learned Single Judge was based on a reading of the ratio of M/s.Sterling Agro Industries Ltd (Supra). Thus, in the Division Bench headed by Hon"ble Mr.Justice A.K.Sikri, the issues were further explained. In the aforesaid judgment (Vishnu Security Services (Supra), it was clarified that in M/s.Sterling Agro Industries Ltd (Supra), the Special Bench had accepted that even if a minuscule part of the cause of action arose within the jurisdiction of a Court, writ petition was maintainable before that Court. The order of the Appellate Tribunal also constitutes a part of



cause of action for making a writ petition maintainable in that High Court within whose jurisdiction the Appellate Authority is constituted. What was clarified by Sterling was that such factor alone should not be taken into account and decision be not made on such singular factor of the location of the Appellate Authority, for deciding the jurisdiction. Discretion, it was explained, lay with the High Court which could refuse to exercise its discretion by invoking the doctrine of forum non convenience (Emphasis provided by this Court). It was further elaborated that if the impugned order is passed by an Appellate Authority which is located within the territorial jurisdiction of a High Court, the jurisdiction would be there with that High Court but it would be open for the High Court to take a call on the issue of jurisdiction and if the High Court does not like to exercise the discretionary jurisdiction of entertaining any petition on the application of doctrine of forum convenience, other reasons will have to be accorded as to why it would not be appropriate to exercise the discretion. The reasons would obviously be on the attendant facts and circumstances of each case. Thus, a scrutiny has to be made by the High Court in such matters for application of doctrine of forum convenience



or forum non convenience. The Division Bench in Vishnu Security Services (Supra) further held as follows:-

"When we read the judgment in Kusum Ingots (supra) in the manner suggested by the learned counsel and take into consideration the combined effect of paras 25 to 27 of the said judgment, what follows is that when the original authority is constituted at one place and the appellate authority is constituted at another, not only the writ petition is maintainable at both places, it is further specifically held by the Supreme Court that in such a case, it will be for the petitioner to choose his forum (see para 25). Once the Supreme Court gave choice to the petitioner, the question would be as to whether the Court can still non-suit him invoking the doctrine of forum conveniens. To answer this, let us again analyze in detail what Kusum Ingots (supra) holds. We have to bear in mind that in Kusum Ingots (supra), the issue of territorial jurisdiction was raised in the context of challenge to the law, namely, judicial review of legislative action, viz., provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The



Court was considering the question whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India. The writ petition was filed in Delhi High Court which was dismissed on the ground of lack of territorial jurisdiction. In appeal, the contention was that since the SARFESI was a parliamentary Act and the seat of Parliament was in New Delhi, Delhi High Court had the jurisdiction. This contention was rejected and discussion qua this is contained in paras 19 to 26 of the judgment which would demonstrate laying down the following principles:

(a) The passing of a legislation does not itself give rise to a cause of action;

(b) No writ can be entertained and no constitutional question can be determined in a vacuum, that is to say, in the absence of a cause of action; and

(c) An order passed in a writ petition questioning the constitutionality of a Parliamentary



Act will have the effect throughout the territory of India.

It is thereafter that the Court went further and expounded the doctrine of "forum conveniens" with reference to a situation where original authority is in one State and the seat of the appellate authority is located in another State. Once it is categorically held in paras 25 to 27 that in such a case, the writ would be maintainable in both the Courts and also that it is the petitioner which has right to choose his forum, we are of the view that primacy to the freedom given to the petitioner needs to be respected. Therefore, we clarify that normally in such circumstances, writ would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied. The directions of the Sterling Agro (supra) have to be understood in that manner alone, otherwise it would be negation of the principle stated in Kusum Ingots (supra), particularly paras 25 to 27 thereof....."



16. The issue regarding territorial jurisdiction again came up for consideration in case of ***Nawal Kishore Sharma vs. Union of India & Ors.*** reported in ***(2014) 9 SCC 329***. In this case also, the Supreme Court, after recounting the developments in the constitutional law with respect to Article 226 of the Constitution of India and explaining what the term “cause of action” actually ought to mean and by referring to various other cases on the issue, held that even if a small part of cause of action arises within the territorial jurisdiction of a High Court, that itself may not be considered to be the only determinative factor compelling that High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience.

Then, after referring to the cases viz. ***Union of India and Anr. vs. Adani Exports Limited and Anr. (2002) 1 SCC 567, Om Prakash Srivastava vs. Union of India and Anr. (2006) 6 SCC 207, Rajendran Chingaravelu vs. R. K. Mishra, Additional Commissioner of Income Tax and Others, (2010) 1 SCC 457***, the Supreme Court propounded that there cannot be any doubt that the question whether or not cause of action wholly or in part



for filing a writ petition has arisen within the territorial limits of any High Court, has to be decided in the light of nature and character of the proceedings under Article 226 of the Constitution of India.

17. In the aforesaid case, the petitioner was declared medically unfit for sea service because of a heart disease and as a result thereof, the Shipping Department of Government of India issued an order cancelling the registration of the petitioner/appellant as a sea man. The aforesaid letter was sent to him at his native place in Bihar where he has been staying after he was found medically unfit. Taking this fact into account, the Supreme Court concluded that the High Court of Patna had wrongly dismissed his writ petition for want of territorial jurisdiction.

18. From the aforesaid discussion, it can only simply and pithily be stated that technically speaking, with the service of the letter of termination/dismissal to the petitioner at his residential address in Bihar, jurisdiction is conferred in this Court. While saying so, I have also taken into account the fact that the petitioner had been serving on the lowest rung in an organization and it would be improper for this Court to push him out on the technical ground that the order of dismissal (order sought to be impugned) was passed while he was



serving the Indo Tibetan Border Police Force in the State of Jharkhand and that the issuing authority was not located in the State of Bihar.

19. For the aforesaid reasons indicated above, the prayer made in the Interlocutory Application No. 335 of 2015 is allowed.

20. The objection of the learned counsel for the respondents is overruled.

21. The petitioner is permitted to assail the order of dismissal.

I.A. No. 4549 of 2017

22. This is an application filed on behalf of the respondents for deleting the respondent no. 1 from the array of parties (Union of India) as the issue relates to the office of the Director General (respondent no. 2) and the subordinate officers.

23. For the reasons stated in the application, the prayer is allowed.

24. Respondent no. 1 is deleted from the array of parties.

C.W.J.C. No. 25650 of 2013

25. From the perusal of the order impugned dated 18.03.2014, it appears that the petitioner had proceeded on earned leave from 30.10.2013 to



18.11.2013 afternoon. Ever since then, the petitioner is stated to have absented himself from service.

26. The order impugned further takes note of the fact that the petitioner submitted a letter dated 14.11.2013 seeking an extension of the period of earned leave for the purposes of getting himself treated. The aforesaid letter was responded by Office Order No. 11051-22 dated 22.11.2013 rejecting such request of the petitioner on the ground that he could be better treated by the doctors of the Indo Tibetan Border Police Force. The petitioner was therefore asked to immediately present himself in the force.

27. Since the petitioner did not respond to the aforesaid letter nor joined the duty, he was intimated by Letter Nos. 11345 dated 30.11.2013; 11564-65 dated 09.12.2013; 11755-56 dated 17.12.2013; and Letter No. 7 dated 02.01.2014 but despite such directions/intimations the petitioner did not join the duty. On 24.11.2013, however, another application was filed by the petitioner seeking extension of the leave as he was suffering from low back ache with UTI. The aforesaid letter was received in the office of the department on 31.12.2013 by post. This letter was also answered vide Letter No. 134-36 dated 10.01.2014 directing the petitioner to immediately join the duty.



Simultaneously, a letter was issued to the Senior Superintendent of Police, Hajipur for arresting the petitioner and bringing him before 6th regiment of Indo Tibetan Border Police Force, Tejpratap Nagar, Bypass, Anisabad, Patna. A copy of the aforesaid letter was also sent to the officer-in-charge of the Chakamgola Police Station in the district of Vaishali. Such letters also could not procure the attendance of the petitioner. Later other letters dated 15.01.2014 and 17.01.2014 were received in the office of the department on 20.01.2014. This again was responded by the department by asking the petitioner to report in the force along with all the medical documents.

The medical papers which were sent by the petitioner along with the letters referred to above were sent for confirmation to the concerned doctor viz. Dr. Anil Kumar, General Physician practicing at Hajipur and he has reported that the petitioner never visited him after 09.11.2013.

28. These facts were construed by the department as reflecting misconduct on the part of the petitioner. The petitioner was considered to be an indisciplined member of the force. In the past also, for absenting himself from duty without any authority, he



was served with punishment in the years 1992 and 1994.

29. Forced by the absence of the petitioner, a court of enquiry was constituted as contemplated under Section 74 (1) of the Indo Tibetan Border Police Force Act, 1992. The aforesaid court of enquiry declared the petitioner to be a deserter in terms of Section 74 (2) from 18.11.2013 by order dated 14.02.2014. A copy of the aforesaid order was served upon the petitioner by sending it through post on his home address and by informing of Superintendent of Police, Vaishali as well as the SHO Police Station Chakamgola.

30. It further appears that by Office Order No. 1036-38 dated 14.02.2014, a last notice was given to the petitioner to furnish his defence within 30 days or else *ex parte* decision shall be taken. Despite such notice, no response was received from the end of the petitioner. The department therefore was of the view that the petitioner is not interested in continuing in the service and that it would not be in the interest of the force to keep in employment such an indisciplined person. Thus, in view of the provision contained in Rule 17 and 25 of the Indo Tibetan Border Police Force Rules, 1994, the petitioner was dismissed from service.



31. Mr. Amresh Kumar Singh, learned counsel for the petitioner, while assailing the aforesaid order, has submitted that an employee/the petitioner could not have been terminated from service without following the process of departmental proceedings as it would be a breach of Article 311(2) of the Constitution of India. While canvassing the aforesaid point, Mr. Amresh Kumar Singh has stated that the fundamental principle of natural justice or a fair enquiry demands communication of the charge to the concerned person and to allow him to file his reply thereto. If the reply is found to be unsatisfactory, then only an enquiry is to be made of the charge by appointing an enquiry officer who would be required to intimate the date of enquiry. If witnesses are to be examined by the departmental authority, they must be examined in presence of the employee after giving advance information to him about the date of such examination and only then can an order of termination be passed. He has further submitted that the termination/dismissal order impugned in the present petition is contrary to the provisions contained in Indo Tibetan Border Police Force Act, 1992 and Rules, 1994. In support of the aforesaid contention, he has referred to two decisions rendered in case of **Ashok Kumar**



Pandey and Others vs. The State of Bihar reported in ***1985 PLJR 207*** and ***(2008) 1 PLJR 841***.

32. As opposed to the aforesaid submissions, Mr. Anshuman Singh, learned counsel for the respondents has drawn the attention of this Court to the fact that in terms of Section 74 of the Indo Tibetan Border Police Force Act, 1992, a court of enquiry was constituted and after careful deliberation, the petitioner was declared a deserter.

33. The order impugned, it has been argued, itself indicates and clarifies that apart from many notices to the petitioner to return to the force, the last notice seeking his reply was issued on 14.02.2014 giving him time to offer his defence for his unauthorized absence. That also was not responded to.

34. Section 17 of the Indo Tibetan Border Police Force Rules, 1994 deal with termination of service. Section 20 of the Rules referred to above deals with termination of service of persons other than officers on account of misconduct and Section 25 of the Rules deals with the termination of the service of enrolled persons on the ground of unsuitability.

35. The aforesaid two Sections are being reproduced for the sake of completeness:

20. Termination of Service of persons, other than officers on account of



misconduct.- (1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him to show cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply-

(a) where the service is terminated on the ground of conduct which has led to his conviction by a Criminal Court or a Force Court; or

(b) where the authority as specified in rule 17 is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the authority as specified in rule 17 is satisfied that the trial of such a person by the Force Court is inexpedient or impracticable, but is of the opinion, that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the authority as specified in rule 17 may withhold from disclosure any such report or portion thereof, if in his opinion, its disclosure is not in the interest of security of the State.

(3) The authority as specified in rule 17 after considering his explanation and defence, if any, or the judgment of the Criminal Court, as the case may be, may dismiss or remove him from the service.

(4) All cases of dismissal or removal, under this rule, shall be reported to the Director General.

25. Termination of service of enrolled persons on the grounds of unsuitability.- Where a Commanding Officer



not below the rank of Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the enrolled person shall be-

(a) so informed;

(b) furnished with the particulars of all matters adverse to him; and

(c) called upon to urge any reasons he may wish to put forward in favour of his retention in the service:

Provided that clauses (a), (b) and (c) shall not apply, if the Commanding Officer not below the rank of Commandant is satisfied that for reasons to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof;

Provided further that such competent authority may not furnish to the enrolled person any matter adverse to him, if in his opinion, it is not in the interest of the security of the State to do so.

(2) After considering the explanation, if any, the Commanding Officer not below the rank of Commandant, may call upon the enrolled person to retire or resign and on his refusing to do so, the enrolled person may be compulsorily retired or discharged from the service.

36. The petitioner having been declared a deserter and not responding to the last of the notices sent by the department, has made himself liable to be terminated/dismissed from service for misconduct as also on the ground of his unsuitability for the force.

37. The order impugned clearly stipulates that it was considered by the authority that keeping the petitioner under employment of the force would not be conducive to the formation of a para military force.



38. Having heard the learned counsel for the parties, I am satisfied that all the requirements for a fair enquiry was attempted to be complied with by the department but no such enquiry could be held as the petitioner willfully absented himself from the force. No explanation ever was received by the department despite categorical instructions to him. It cannot be stated that the proceedings were carried on behind the back of the petitioner deliberately and maliciously. The conduct of the petitioner definitely reflects that he is not interested in continuing with the service, or else he would have responded to the notices.

39. For the aforestated reasons, this Court does not deem it appropriate to interfere with the order impugned.

40. The writ petition is therefore dismissed.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.12.2018
Transmission Date	

