

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1482 of 2018**

Shivshankar Gupta S/o Shri Buchchu Sao, Aged About 45 Years, Retired Constable G.D CISF, R/o Ramte Road, Kunkuri, Police Station Kunkuri District Jashpur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Ministry Of Home Affairs North Block New Delhi, District : New Delhi, Delhi
2. The Director General, Central Industrial Security Force (CISF) Headquarter 13 CGO Complex Lodhi Road New Delhi - 3, District : New Delhi, Delhi
3. The Deputy Inspector General, CISF, Western Zonal Headquarter, CISF Premises Taloja Kharghar Navi Mumbai (Maharashtra)
4. The Senior Commandant, CISF Unit Mumbai Port Trust, Mumbai Hugesh Dry Dock Building Indra Dock Ballared State Mumbai - 400001, District : Mumbai, Maharashtra
5. The Assistant Commandant CISF, Unit Mumbai Port Trust Mumbai Hugesh Dry Dock Building Indira Dock Ballared State Mumbai 400001, District : Mumbai, Maharashtra

---- Respondents

For Petitioner	:	Mr. Harish Khuntiya, Advocate.
For Respondents-UoI	:	Mr.Rajkumar Gupta, standing counsel.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/02/18**

1. The petitioner was working as Constable in Mumbai under the Central Industrial Security Force (CISF). He was placed under suspension by order dated 27.06.2011 passed by the Assistant Commandant, CISF, Mumbai which was revoked by Appellate Authority - Senior Commandant, CISF, Mumbai by order dated 05.07.2011. Thereafter, petitioner was

inflicted with penalty of withholding of two increment without cumulative effect for the period of two years by order dated 28.07.2011 by the Assistant Commandant, CISF, Mumbai which was appealed and the Appellate Authority by order dated 31.10.2011 modified the order thereby reducing the punishment as withholding of increment of one instead of two years. Revision was preferred and it has been dismissed by order dated 27.03.2012 by the Director General, CISF, New Delhi. Questioning the aforesaid orders, the instant writ petition has been filed before this Court.

2. At the outset, learned counsel for the respondents would submit that this Court has no territorial jurisdiction to hear the matter, as the original order, the appellate order and the revisional order, all have passed by the competent authority of CISF Unit Mumbai and Delhi, therefore the writ petition deserves to be dismissed on the ground of want of territorial jurisdiction.

3. Learned counsel appearing on behalf of petitioner would submit that petitioner is resident of State of Chhattisgarh, therefore, this Court has territorial jurisdiction to hear the matter by virtue of Article 226(2) of the Constitution of India. He further submits that the impugned orders of punishment have been passed without conducting any enquiry and without affording any reasonable opportunity of hearing to the petitioner which are unsustainable and bad in law as the same are liable to be set aside.

4. I have heard learned counsel for the parties, considered their rival submissions and perused the impugned orders with utmost circumspection.

5. A Constitution Bench decision of the Supreme Court in the matter of **Election Commission, India v. Saka Venkata Rao**¹ and another Constitution Bench decision of the Supreme Court in the matter of **K.S. Rashid and Son v. Income Tax Investigation Commission and others**² came-up for consideration before a larger Bench of seven judges of the Supreme Court in the matter of **Lt. Col. Khajoor Singh v. Union of India**

1 AIR 1953 SC 210

2 AIR 1954 SC 207

and another³ in which Their Lordships have held that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court, and observed as under: -

“(13) ... The relevant words of [Art. 226](#) are these—

"Every High Court shall have power .. to issue to any person or authority .. within those territories..."

So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories? Now it is clear that the jurisdiction conferred on the High Court by [Art. 226](#) does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in [Art. 226](#) the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under [Art. 226](#). The introduction of such a concept may give rise to confusion and conflict of jurisdictions. Take, for example, the case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States. Can it

be said that [Art. 226](#) contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it? The answer must obviously be 'No', if one is to avoid confusion and conflict of jurisdiction. As we read the relevant words of [Art. 226 \(quoted above\)](#) there can be no doubt that the jurisdiction conferred by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of introducing the concept of the place where the order is to have effect in order to determine which High Court can give relief under it. It is true that this Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. If we were to introduce in [Art. 226](#) the concept of the place where the order is to have effect we would not be advancing the purposes for which [Art. 226](#) has been enacted. On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under [Art. 226](#). Now, functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore it would not be right to introduce in [Art. 226](#) the concept of the functioning of Government when determining the meaning of the words "any person or authority within those territories". By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in [Art. 226](#). There can, therefore, be no escape from the conclusion that these words in [Art. 226](#) refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories."

6. In view of the aforesaid authoritative pronouncement of the Supreme Court, if the facts of the case are applied to the principles of law laid down in **Lt. Col. Khajoor Singh** (supra), none of the respondents reside or located within the jurisdiction of this High Court and therefore the petition

has to be presented before the High Court within whose jurisdiction the respondents have had their offices or where the impugned order was passed. Merely because, the petitioner is resident of the State of Chhattisgarh would not confer jurisdiction to this Court to entertain the writ petition.

7. In view of the aforesaid facts, this Court is of the considered opinion that this Court has no territorial jurisdiction to entertain this writ petition. The writ petition, is therefore, liable to be dismissed and is accordingly dismissed. However, this will not bar the petitioner to approach the jurisdictional High Court for redressal of his grievance. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge