

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 21218 of 2021

TA-42735L Maj Lowlesh Chandra Pandey
Vs.
Union of India & Ors.

Ms. Manika Roy
... For the petitioner

Mr. Y.J. Dastoor, Ld. ASG
Mr. Partha Ghosh
Mr. Subit Majumdar
... For the respondent no.1/UOI

The petitioner while serving at 112 Infantry Bn (TA) Dogra had suffered a heart attack on 12th June, 2018 at the Officers Training Academy, Gaya. The petitioner underwent treatment at Gaya and Kolkata was ultimately placed under Special Unattached List (in short "SUL") for the years 2021-22, 2022-23 and 2023-24. The petitioner has challenged this decision communicated to him by a letter dated 16th June, 2021 in the instant writ petition. The petitioner is an officer under Territorial Army and, as such, any service matter as specified under Section 3(o) of the Armed Forces Tribunal Act, 2007 has to be filed before the jurisdictional Armed Forces Tribunal.

The petitioner in paragraph 39 of the writ petition has averred to have been filed an application before the

Armed Forces Tribunal, Kolkata, being OA No.75 of 2021. According to the petitioner, the Kolkata Bench of the Armed Forces Tribunal is not functional and, as such, he has to go before the Principal Bench to have the said application heard which is not only inconvenient but will cause hardship to the petitioner owing to his health. The petitioner, therefor, has approached this Court citing the judgment reported in (2020) 6 SCC 1 (Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager & Ors.). Relying on paragraph 392 of the said judgment, the petitioner says that he is entitled to file the writ petition before this Court and this Court has the jurisdiction to receive, try and determine the same. The petitioner further says that as the petitioner is a resident of Kolkata and after being placed under SUL is residing thereat. The petitioner has received the letters at Kolkata and otherwise entitled to file and maintain the writ petition before this Court.

On behalf of the respondent no.1, it is submitted that the Armed Forces Tribunal is the appropriate forum wherein the petitioner should ventilate his grievances. Admittedly, the petitioner had approached the Kolkata Bench of the Armed Forces Tribunal. The petitioner has, however, suppressed the fact that on or about 27th October, 2021, the petitioner had filed an application before the Armed Forces Tribunal, Regional Bench at Chandigarh, on the selfsame issue. This amounts to

suppression of material fact for the purpose of forum shopping. The petitioner, therefor, has approached this Court with unclean hands and, is, therefor, not entitled to any relief in exercise of jurisdiction under Article 226 of the Constitution of India. A copy of the application said to have been filed by the petitioner before the Armed Forces Tribunal, Regional Bench, Chandigarh, is made over to Court and is retained with the record.

The respondent no.1 further says that being lastly posted at Dogra, Udhampur under the Northern Command, the jurisdictional Tribunal is that at Chandigarh. The Chandigarh Tribunal is in operation and is functioning on regular basis. The petitioner, therefor, cannot take benefit of the judgment in *Roger Mathew (supra)* to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The respondent no.1 also says that assuming without admitting the petitioner in view of the judgment in *Roger Mathew (supra)* is entitled to file a writ petition before a High Court, then also such writ petition cannot be maintained before this Court in view of lack of territorial jurisdiction.

The issue of territorial jurisdiction has been considered in the judgment reported in (2014) 9 SCC 329 (*Nawal Kishore Sharma v. Union of India & Ors.*). In the said judgment, the Hon'ble Supreme Court has held that to maintain a writ petition before a particular High Court, the petitioner has to establish that a legal right claimed by

him has been infringed by the respondents within the territorial limit of that High Court's jurisdiction.

In the instant case, the petitioner has been placed under SUL at Dogra, Udhampur, while he was serving under the Northern Command. The petitioner's right, therefor, has been infringed at Dogra as he continued to be in service thereat till placed under SUL in considering his health condition. The petitioner has suffered a heart attack at Gaya and has been also treated at the Eastern Command Hospital, Kolkata. The High Courts having territorial jurisdiction of Gaya and Kolkata do not have any jurisdiction inasmuch as no infringement of any legal right has taken place in the said two places.

The writ petition, therefor, is dismissed on three grounds:- firstly, for having suppressed material fact which amounts to approaching this Court invoking the writ jurisdiction with unclean hands; secondly, this Court lacks territorial jurisdiction to receive, try and determine the writ petition even if a writ petition is held to be maintainable before a High Court in view of the ratio laid down in *Roger Mathew (supra)*; and, thirdly, because the Armed Forces Tribunal at Chandigarh wherein the petitioner has already approached is still operational and functioning on regular basis.

Dismissal of the writ petition, however, will not disentitle the petitioner to avail any remedy invoking any other provisions of law.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)