

16.11.2023  
Court No. 13  
Item No. 16  
AP

**WPA 18868 of 2023**

**Kamal Chakraborty  
Vs.  
The Union of India and Ors.**

Mr. Subhabrata Datta  
Mr. Jatindra Barik

.... For the Petitioner.

Mr. Sauvik Nandy  
Ms. Ranjana Chatterjee

.... For the Union of India.

1. The petitioner challenges order dated 4<sup>th</sup> May, 2022 passed by the respondent No.3, order dated 2<sup>nd</sup> September, 2022 passed by the respondent No.4 confirming the order dated 4<sup>th</sup> May, 2022, and the order dated 20<sup>th</sup> September, 2022 passed by the respondent authorities.

2. The petitioner was last serving as Inspector of the Sashastra Seema Bal (hereinafter referred to as “the SSB”) at Bhanupratappur, Bhilai, Chhattisgarh. The petitioner was placed under suspension on 30<sup>th</sup> March, 2021 and a Court of Enquiry was ordered into the circumstances under which the petitioner fired a bullet from his weapon. Formal charge sheet was issued to the petitioner on 11<sup>th</sup> September, 2021.

3. The General Force Court (hereinafter referred to as “the GFC”) proceedings commenced against the petitioner on 22<sup>nd</sup> November, 2021 and were concluded on 29<sup>th</sup> December, 2021.

4. By the final order passed on 29<sup>th</sup> December, 2021, the petitioner was reduced to the rank of Sub-inspector and compulsorily retired from service. The entire proceedings took place in Chhattisgarh.

5. The confirming authority of the order of the GFC affirmed the punishment order on 18<sup>th</sup> April, 2022. The pre-confirmation petition of the writ petitioner was rejected on 4<sup>th</sup> May, 2022. The sentence was formally promulgated on 14<sup>th</sup> May, 2022. On an appeal being preferred by the writ petitioner against the order of the confirming authority, the Deputy Inspector General (Personnel), SSB informed the writ petitioner on 20<sup>th</sup> September, 2022 that his appeal was rejected. In the meantime, the Inspector General (Operations), respondent No.4, passed an order to the effect that the writ petitioner's period of suspension of 181 days would not be treated as "on duty".

6. This Court notices that each and every one of the respondents impleaded in the writ petition are located either at New Delhi or at Chhattisgarh. The incident leading to the departmental proceedings against the writ petitioner took place at Chhattisgarh, outside the territorial jurisdiction of this Court. The GFC proceedings and the orders of the first authority, the DIG (Personnel), Force Head Quarter, SSB and the order of the IG (Operations), Force Head Quarters, SSB, were all issued at Chhattisgarh and New Delhi.

7. Mr. Subhabrata Datta, learned counsel appearing for the writ petitioner would argue that the writ petitioner received the orders of punishment at his residence in Uttarayan (Kalikapur), Barasat, North 24-Parganas, West Bengal. He had made his representation and/or pre-confirmation petition from his residence at West Bengal.

8. He further submits that the argument of the respondent that this Court has no territorial jurisdiction, is incorrect. He submits that since the writ petitioner is receiving pension here after implementation of the punishment orders, he is entitled to invoke the jurisdiction of the Calcutta High Court to challenge the entire proceedings against him.

9. He further specifically refers to the order dated 2<sup>nd</sup> September, 2022 that was received by him in West Bengal. The decision on the period of suspension of the Inspector General (Operations), Force Head Quarters, SSB, apart from the gross illegal is without jurisdiction (since he was not the disciplinary authority) is yet another reason is available to the writ petitioner to invoke the jurisdiction of this Court.

10. In support of his argument Mr. Datta placed reliance of two decisions of the Hon'ble Supreme Court. Firstly, the case of **Nawal Kishore Sharma Vs. Union of India and Ors.** reported in **(2014) 9 SCC 329** and secondly, the case of **Shanti Devi alias Shanti Mishra**

***Vs. Union of India and Ors.*** reported in ***(2020) 10 SCC 766.***

11. This Court has carefully heard the arguments advanced by the learned counsel for the writ petitioner.

12. The case of ***Nawal Kishore Sharma (supra)*** is distinguishable on facts. The appellant therein suffered a serious heart muscle disease, which forced him to abandon service as a seafarer with the Shipping Corporation of India. He came ashore and returned to his native place in Bihar. The respondent Shipping Corporation of India at the High Court level had not objected to the territorial jurisdiction of the Patna High Court at any point of time until the matter reached the Hon'ble Supreme Court. It is these two facts that must be essentially viewed as vital for the purpose of assessing the applicability of the ***Nawal Kishore Sharma*** decision.

13. Insofar as the case of ***Shanti Devi (supra)***, it is noticed that the appellant therein was aggrieved by non-receipt of pension on account of service of her deceased husband. The appellant was residing at Bihar, within the jurisdiction of the Patna High Court. Stoppage of pension was the cause of action for a widow of an employee of the State. The territorial jurisdiction of the Patna High Court was therefore upheld by the Supreme Court.

14. It is now well-settled, that each ratio and applicability of each decision must be considered in the facts and circumstances of each case. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in the case of ***Arasmeta Captive Power Co. Pvt. Vs. Lafarge India (P) Ltd.*** reported in **(2013) 15 SCC 414**.

15. On the argument of territorial jurisdiction and the applicability of Sub-clause 2 of Article 226 of the Constitution of India, this Court is reminded of the decision of the Hon'ble Supreme Court in the case of ***Alchemist Limited and Anr. Vs. State Bank of Sikkim and Ors.*** reported in **(2017) 11 SCC 335** and amongst several other cases as already explained in the ***Nawal Kishore Sharma (supra)*** decision that the cause of action is a bundle of facts. Indeed it is true that, in the instant case, receipt of final orders, territorial jurisdiction of the Calcutta High Court is a part of the petitioner's cause of action. However, applying the dicta in the case of ***Alchemist (supra)*** and the ***Oil and Natural Gas Commission Vs. Utpal Kumar Basu*** reported in **(1994) 4 SCC 711** what must be seen is as to whether a substantial part of the cause of action has arisen within the territorial jurisdiction of the High Court concerned.

16. In the instant case it is seen that the incident for which the writ petitioner was charged and punished

occurred in the State of Chhattisgarh. The GFC proceedings took place in Chhattisgarh, in which the writ petitioner duly participated. The consideration of the pre-confirmation petition of the writ petitioner occurred at New Delhi or at Chhattisgarh.

17. It is these proceedings and final orders that are the principal subject matter of the writ petitioner's cause of action. The receipt of the orders by the writ petitioner here in the Barasat, North 24-Parganas, West Bengal may at best be a minuscule part of the cause of action of the writ petitioner, but the substance of the challenge and the pleadings in the writ petition clearly indicate that the writ petitioner's cause of action cannot be entertained by the Calcutta High Court. The only pleading in the writ petition as regards the territorial jurisdiction of this High Court is at Para 41, Page 13 of the writ petition, which reads as follows:-

*“41. It is humbly stated that after promulgation of sentence, the petitioner had to take all statutory recourse against the said finding and sentence of General Force Court and order of confirmation from his permanent residence located at Village-Uttarayan (Kalikapur), Post Office and Police Station- Barasat, District- North 24-Parganas, Pin- 700124. Moreover, the order of rejection of the appeal preferred by the petitioner was also communicated to the petitioner at his permanent residence as mentioned before. Therefore, as the writ*

*petitioner's right has been infringed by dint of the rejection of his appeal at his permanent residence, the part cause of action arose within the territorial jurisdiction of this Hon'ble High Court under Article 226(2) of the Constitution of India. Apart from the aforesaid fact, your petitioner has been receiving regular pensionary benefit at his permanent place of residence and therefore, this Hon'ble Court is having territorial jurisdiction to entertain this present lis."*

18. A plain reading of such writ petition, indicate that the writ petitioner is aggrieved by rejection of his appeal. The receipt of pensionary benefits at Barasat in West Bengal cannot be part of the petitioner's cause of action.

19. Having regard to the dicta of the Supreme Court in the case of **Alchemist (supra)**, **Morgan Stanley Mutual Fund Vs. Kartick Das** reported in **(1994) 4 SCC 225**, **State of Rajasthan Vs. Swaika Properties** reported in **(1985) 3 SCC 217**, **Kusum Ingots & Alloys Ltd. Vs. Union of India** reported in **(2004) 6 SCC 254** and several others, this Court is of the clear and unequivocal view that this Court should not entertain the writ petition as framed.

20. The writ petition is therefore dismissed, reserving liberty to the writ petitioner to challenge the proceedings instituted by the SSB against him before an appropriate Court having territorial jurisdiction over the subject matter.

21. There shall be no order as to costs.

22. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**