

08.04.2024
SI No.11
Court No.8
(gc)

**MAT 255 of 2024
CAN 1 of 2024**

**Goutam Sengupta
Vs.
Union of India & Ors.**

Mr. S.K. Datta,
Mr. Barun Chatterjee,
Mr. Debasis Lahiri

... for the Appellant.

Mr. A. Banerjee,
Ms. Sayani Roy Chowdhury,

...for the U.O.I.

1. The appeal is arising out of a judgment dated 3rd January, 2024 by the learned Single Judge in a writ petition in which the appellant/petitioner has challenged the final order dated 27th September, 2021 passed by the Under Secretary to the Government of India confirming the recovery order passed by the Assistant Commissioner-I Administration, CMPFO of the Coal Mines Provident Fund Organization.
2. In the writ petition, a writ in the nature of mandamus was prayed for to quash the disciplinary proceeding and the final order passed by the Disciplinary and the Appellate Authority. The penalty imposed

on the petitioner was reduction of pay by two stages in time scale of pay for a period of one year with effect from 1st October, 2018.

3. The petitioner was superannuated from service in September, 2019. He was the Regional Commissioner-I of the CMPFO Headquarters at Dhanbad in the State of Jharkhand. The statements of charges have been detailed in the impugned order and we do not feel it necessary to refer to the said charges, save and except, that the charge-sheet was issued from New Delhi and the incident covered by the charges occurred while the writ petitioner was serving at Dhanbad in the State of Jharkhand. The disciplinary proceeding was held at Dhanbad.
4. The learned Counsel for the writ petitioner in assailing the impugned order has submitted that the final order of the Appellate Authority and the orders of the Under Secretary of the Government of India dated 27th September, 2021 as also the recovery order dated 27th March, 2023 including the order rejecting the appeal of the petitioner were all received by him at Durgapur. He was also receiving his

provisional pension at Durgapur. He contested the disciplinary proceedings until his superannuation at Dhanbad but a substantial part of the proceedings was held post superannuation which he defended from Durgapur. It is, thus, submitted that a substantial part of the cause of action of the petitioner arose within the State of West Bengal under the territorial jurisdiction of this Court. The learned Counsel on behalf of the petitioner has also relied upon the decision of the Hon'ble Supreme Court in ***Shanti Devi alias Shanti Mishra Vs. Union of India & Ors. reported at (2020) 10 SCC 766***, particularly, paragraphs 23, 26, 32 and 33 thereof to argue that a part of the cause of action has arising within the jurisdiction of this Court and, therefore, this Court in view of Article 226(2) of the Constitution of India is having the jurisdiction to try and receive the writ petition.

5. In ***Shanti Devi*** (supra) the employee concerned (husband of the appellant before the Supreme Court) was enjoying pension for almost 8 years at his residence at Darbhanga, Bihar within the territorial jurisdiction of the Patna High Court. He

was working in a subsidiary of the Coal India Limited at Jharkhand and in the State of West Bengal. The authority which attempted to recover his pension was located at Jharkhand. The subject-matter of ***Shanti Devi*** (supra) was whether the employee who had exercised option during his service for pension was entitled to the same and the quantum of pension thereof. It is in the backdrop of such facts that the Supreme Court held that even if a fraction in the employee's cause of action (refusing to revoke refund) arose within the territorial jurisdiction of the Patna High Court, the said High Court would have territorial jurisdiction to entertain the writ petition. The Supreme Court was also of the view that it would be extremely unfair and onerous on the part of a retired employee and/or his widow to pursue the case for pension and travel all the way from Gaya in Bihar to Ranchi in Jharkhand or to Calcutta or Delhi.

6. The learned Single Judge has also considered the decision in ***Naval Kishore Sharma Vs. Union of India & Ors. reported at (2014) 9 SCC 329*** which was referred to in ***Shanti Devi*** (supra) in which

a seaman, who was discharged from service on account of medical unfitness (difficulty in breathing and a severe heart condition) residing in Gaya was found entitled to maintain a writ petition in the Patna High Court. It was found inhuman to expect a person with a severe medical condition to travel outside his State to litigate for pensionary benefits.

7. Apart from the aforesaid, a person on retirement is required to receive his pensionary benefits and the place where he would ultimately settle and the pensionary benefits is an extremely valuable right which an employee earned during his service and by reason of his service cannot be treated as bounty. However, in the present case the reliefs cannot be isolated from the fact that in the writ petition he has principally challenged the entire disciplinary proceedings culminated in the final order. The facts would reveal that the disciplinary proceedings were commenced against the writ petitioner where he was in service at Dhanbad in the State of Jharkhand. The proceedings continued after his retirement in September, 2019 by which time he had moved to his home town at Durgapur in

West Bengal. The proceeding was held at Dhanbad. In fact, the petitioner had travelled at Dhanbad to contest the said proceeding even after his retirement.

8. The learned Single Judge, in our view, has correctly assessed the facts including the reliefs claimed in the writ petition in order to arrive at a finding that the recovery sought to be made from the terminal benefits is merely consequential and the reliefs claimed primarily are in relation to the disciplinary proceedings which were held in Jharkhand.
9. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.
10. The appeal fails.
11. However, the writ petitioner would be at liberty to agitate the self-same cause of action before the Court having territorial jurisdiction over the subject-matter.
12. Accordingly, the appeal and the connected application are dismissed.
13. However, there shall be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)