

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**FMA 818 of 2019
Union of India & Ors.
Vs.
Jagadish Chandra Laskar
With
FMA 819 of 2019
Jagadish Chandra Laskar
Vs.
Union of India & Ors.**

For the UoI : Mr. S.N. Dutta
Mr. Saikat Karmakar

For the Respondent : Mr. Achin Kr. Majumder,
/Writ Petitioner Ms. Ananya Adhikary.

Heard On : 17.09.2025

Judgment On : 24.09.2025

Sujoy Paul, J.

1. These *intra* Court appeals take exception to the order of Learned Single Judge dated 7th July, 2017 whereby the writ application filed by the employee was disposed of with certain directions. The employee and department both are aggrieved by this order and therefore both the matters were analogously heard.

Factual background:

2. The appellant employee was working as Assistant Security Commissioner with Northern Railway and till his retirement, he remained posted at Patiala. The employee retired on attaining the date of superannuation on 29th February, 2012. On 27th of February, 2012 a charge sheet was issued to him mainly alleging that in 2010, he had misused the privilege travel pass issued by railways by travelling with a women who was not his wife. In view of initiation of disciplinary proceeding, his gratuity and leave encashment benefits were withheld by railways. The employee sent an application dated 27th February, 2012 for releasing his Death-cum-Retirement Gratuity (DCRG) and commutation money. This application was replied by communication dated 3rd March, 2012 which

was addressed to the employee at his permanent residential address under police station Bongaon, District North 24-Parganas, West Bengal. The employee filed WP 27412 (W) of 2012 assailing the charge sheet dated 27th February, 2012 and the aforesaid communication dated 3rd March, 2012. In paragraph 28 of writ petition, it was pleaded that petition is maintainable before Calcutta High Court because petitioner is residing within territorial jurisdiction of this Court and is also drawing pensionary benefits within the same territory. Apart from that, all correspondence have been made with the department from his permanent residence which is also within territorial jurisdiction of this Court. Much emphasis is laid on the impugned communication dated 3rd March, 2012 Annexure "P-3" which is addressed by the department to his permanent address at West Bengal. Lastly, it is pleaded that as a retired employee, his permanent residence is at West Bengal and therefore he has a right to get his grievances redressed under Article 226 of Constitution from this Court.

3. In the aforesaid writ petition filed by the employee, the learned Single Judge recorded the contention of learned counsel for the employee that disciplinary proceedings are

being held at Chandigarh. It will be difficult for the employee who is resident of Bangaon in West Bengal to travel to Chandigarh to contest the disciplinary proceeding. After considering the rival contentions, the learned Single Judge directed the disciplinary authority to conclude disciplinary proceeding at the earliest but not later than 8 weeks from the date of communication of this order even without participation of the petitioner. It was further directed that disciplinary proceedings be concluded by computing the pecuniary loss caused to the railways by misutilizing the privilege travel pass by the employee. It was clearly directed that no other action should be taken against him. The amount of loss may be deducted from gratuity/leave travel benefits of the appellant.

Contention of employee:

4. Learned counsel for the employee submits that for the purpose of disciplinary action, the service conditions of employee are governed by **Railway Servants (Discipline and Appeal) Rules, 1968** (D&A Rules) whereas for pensionary benefits and other aspects **Railway Services (Pension) Rules, 1993** (Pension Rules) are applicable. The disciplinary

proceeding and impugned order of learned Single Judge is called in question by contending –(a) the Charge-sheet dated 27.02.2012 could not be served on the employee before his retirement on 29.02.2012. Thus, under the (D&A) Rules and Pension Rules, disciplinary proceeding and charge-sheet cannot continue after retirement. (b) The misuse of privilege travel pass does not amount to “grave” misconduct. (c) No pecuniary loss is caused to the department on alleged misuse of privilege travel pass. (d) The allegations of such misuse of privilege travel pass is relating to 2010 and charge-sheet was issued on 27.02.2012. There is no explanation of such delay in issuing the charge-sheet. In support of his submissions, learned counsel for the appellant placed reliance on the judgments of Supreme Court and this Court which are as under:

Shri D.V. Kapoor vs. Union of India & Ors. (1990 (3) SLR 5); Union of India vs. E.I.D. Parry (India) Ltd. ((2000) 2 SCC 223); Chandra Singh & Ors. vs. State of Rajasthan & Anr. ((2003) 6 SCC 545); State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava (AIR 2013 SC 3383); The Chairman & Managing Director, Punjab National Bank &

Ors. vs. Dilip Kumar De (1987 (1) CLJ 354; Kamal Kumar Majumdar vs. Union of India & Ors. (2008 (1) CHN 951) and Sri Jnanadhir Mohan Sen Sharma vs. Union of India & Ors. (W.P. 8093 (W) of 2003).

5. On the strength of the above argument and judgments, it is submitted that learned Single Judge ought to have interfered with the charge-sheet and should have directed to release all retiral dues as if the employee was never subjected to impugn disciplinary proceedings.
6. Apprehending that respondents will raise the question of maintainability of writ petition, learned counsel for employee submits that respondents have neither taken any objection regarding maintainability in their affidavit in opposition before the learned Single Judge nor any such pleading is there in the *intra* court appeal filed by the employer. Their oral objection regarding maintainability cannot be entertained. This court cannot permit the department to travel beyond the pleadings and raise an objection which is not founded upon any pleadings.

Stand of the Department:

7. Learned counsel for the Department by placing reliance on the order dated 22.11.2018 passed in these cases by the Coordinate Bench urged that the Coordinate Bench recorded as under:

“We have heard the parties on the question of interim relief. In our prima facie view, the writ petition may not have been maintainable before this Court for lack of territorial jurisdiction. What would be the effect of omission/failure on the part of the respondents in the writ petition to object to its maintainability on such ground, would be decided at the time of hearing of the appeal.

However, we are also of the prima facie view that the learned Judge perhaps was not justified in deciding the penalty to be imposed on the writ petitioner. What would be the penalty to be imposed on a delinquent employee, upon the charges leveled against him being proved, is a matter exclusively within the domain of the disciplinary authority.

In that view of the matter, we stay of operation of the impugned order.”

(Emphasis Supplied)

8. In the light of the said observation, learned counsel for the department submits that the question of territorial jurisdiction goes to the root of the matter and it is open for the department to raise the said objection.

9. The charge-sheet was issued from Northern Railway, Head-quarter Baroda House, New Delhi and addressed to the

petitioner's address at Patiala. As per department's stand, since employee avoided service, it was affixed on his official Bungalow at Patiala. Thus, main cause of action has arisen either at New Delhi or at Patiala. The letter dated 03.03.2012 is only a consequential letter informing the employee that in view of pendency of disciplinary proceeding, his benefits are withheld. The said letter does not give him a triable cause of action.

10. The scope of interference at the stage of charge-sheet by this court is limited. Reliance is placed on ***Union of India & Ors. vs. Upendra Singh (1994) 3 SCC 357***. The judgment of Supreme Court in ***Union of India & Ors. vs. P. Gunasekaran (2015) 2 SCC 610*** is relied upon to highlight that the disciplinary proceedings can be interfered with on limited grounds. No such ground is available in the instant case.

11. The charge-sheet was issued when employee was in service. If he avoided service of charge-sheet, it will not improve his case. The charge-sheet was affixed at his official bungalow which is a known mode of service.

12. The learned Single Judge has erred in not deciding the question of territorial jurisdiction and issuing the order touching upon the merits of the case. The impugned order was criticized on yet another ground that it was not open to the learned Single Judge to decide as to what punishment could be imposed on the employee. It was within the province of the employer to decide the same. The learned Single Judge could not have decided the question of quantum of punishment at the stage of issuance of charge-sheet itself. More so, when learned Single judge has not recorded any finding that charge-sheet is either bad-in-law or the allegation mentioned does not fall within the ambit of “grave” misconduct.

13. The parties confined their arguments to the extent indicated above. We have heard the parties at length and perused the records.

Analysis:

14. The learned counsel for the department raised two main submissions which go to the root of the matter. The submissions are relating to **(i)** territorial jurisdiction of this Court to entertain the writ petition and **(ii)** the jurisdiction of

writ Court to decide the question of punishment at the stage of issuance of charge-sheet. We deem it proper to deal with these aspect at the outset. The Court while dealing with the writ petition needs to trace its jurisdiction from Article 226 (2) of the Constitution. The said provision, in no uncertain terms, makes it clear that jurisdiction can be exercised by a particular High Court if cause of action or its part has arisen within the territory of the particular High Court/bench. No doubt, cause of action is a wide term and means bundle of facts, however, every fact mentioned in the petition does not provide a triable cause of action. The Apex Court in ***Navinchandra N. Majithia vs. State of Maharashtra & Ors., 2000 (7) SCC 640*** opined that cause of actions implied a right to sue. The material facts which is imperative for the suitor to allege and prove constitute the cause of action. The facts which have nothing to do with the main prayer cannot be said to give rise to a cause of action which would confer jurisdiction on the Court. Similar view is taken in ***Kusum Ingots & Alloys Ltd. Vs. Union of India (2004) 6 SCC 254***. Likewise, it is trite that facts which have no bearing with the dispute involved in the case, do not give rise to a cause of

action so as to confer territorial jurisdiction on the Court concerned (**See: *National Textile Corporation Ltd. Vs. Haribox (2004) 9 SCC 786***) “cause of action” for the purpose of Article 226 (2), for all intent and purport must be assigned the same meaning as envisaged under Section 20 (c) of Code of Civil Procedure. It means a bundle of facts which are required to be proved. It is important to note that the entire bundle of facts pleaded, however, need not constitute a cause of action as to what is necessary to be proved is material facts whereupon a writ petition can be allowed (**See: *Eastern Coalfields Ltd. Vs. Kalyan (2008) 3 SCC 456***).

15. In view of the said litmus test laid down by Apex Court, if pleadings in paragraph 28 of writ petition and prayer is examined carefully, it will be clear like noon day that place of residence and payment of pension to the writ petitioner within territory of this Court does not constitute any cause of action. The main and real cause of action has arisen because of the issuance of the impugned charge-sheet which was admittedly issued from Delhi and was affixed on the residence of the employee at Patiala. Thus, even a miniscule part of cause of action has not arisen within the territory of

this Court. The writ petitioner had filed the charge-sheet along with the writ petition but deliberately did not disclose the mode and source from which it has been received by him. In other words, employee had not chosen to disclose as to how and where he gathered the charge-sheet. So far the communication dated 3rd March, 2012 is concerned, under the pension rules, if disciplinary proceeding is instituted before retirement of an employee, under Rule 9 (2) of the said rules, under a deeming provision it must continue and come to a logical end. In view of the Rule 9 and 10 of Pension Rules, the communication dated 3rd March, 2012 was issued and addressed to the employee at his address in West Bengal. This does not constitute an independent and triable cause of action which brings writ petition within territorial jurisdiction of this Court. Even otherwise, no pleading of Paragraph 28 brings the petition within the territorial jurisdiction of this Court under Article 226 of the Constitution.

- 16.** The strenuous contention of learned counsel for employee is that, in absence of any objection being taken before the Learned Single Bench and pleading in *intra* Court appeal

before this Court, question of jurisdiction cannot be raised, cannot be accepted. In view of Order dated 22nd November, 2018 passed by coordinate bench (reproduced in para 7 of this Judgment) in this present matter the coordinate bench left both the questions open and recorded that the same would be decided at the time of hearing of appeal. Thus, we are under an obligation to decide the questions of territorial jurisdiction and the finding of Learned Single Judge regarding punishment to be imposed. We have dealt with in *extenso* that no triable cause of action has arisen within the territory of this court and, therefore, the Learned Single Judge ought not to have entertained the petition. More so, when the impugned order of Learned Single Judge clearly shows that the facts were clearly noticed that employee at the relevant time was posted and retired from Patiala and charge-sheet was issued from New Delhi. In this backdrop, with great respect, Learned Single Judge ought to have first dealt with the question of territorial jurisdiction whether or not it was raised before him. We find fault on another finding of the impugned order i.e. deciding the question of punishment when only charge-sheet was called in question. A similar

point arising out of a Division Bench Judgment of this Court in FMA No.1337 of 2009 decided on 25th August, 2011 became subject matter of challenge before Supreme Court in ***Union of India and Ors. vs. Om Prakash Yadav (2013) 1 Apex Court Judgment (SC) 62***. The relevant Paragraphs reads thus:

“3. The Respondent was the Petitioner before the High Court. He had called in question the correctness or otherwise of the charge-sheet, the report of the Enquiry Officer, as well as the second show cause notice issued by the Disciplinary Authority, without filing any objections/reply to the second Show Cause Notice. Learned Single Judge had allowed the Writ Petition and had quashed the enquiry proceedings initiated by the Disciplinary Authority.

*4. The Union of India had carried the matter further by filing an appeal against the judgment and order passed by the learned Single Judge. **The Division Bench, though, accepts all the contentions canvassed by the Appellant (s) before it, in our opinion, very strangely directs the Disciplinary Authority not to pass any order which would affect the pensionary benefits of the Respondent. In our view, by passing such an order, the High Court has literally stepped into the shoes of the Disciplinary Authority, which is impermissible. It needs to be mentioned, that, the High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of the appellant court/authority. It is settled law that imposition of punishment is within the power and discretion of the disciplinary authority. It is not necessary to refer to the decisions on this topic.***

5. Therefore, while allowing the appeal filed by the Union of India, we set aside the portion of the order passed by the Division Bench

of the High Court, wherein, it had stated that “any order passed by the Disciplinary Authority should not affect the pensionary benefits of the Respondent.”

(Emphasis supplied)

17. In view of above pronouncement, touching upon a similar issue, we have no cavil of doubt that Learned Single Judge has committed an error in deciding the question of punishment at the stage of issuance of charge-sheet. Thus on both counts, the impugned order of Learned Single Judge cannot sustain judicial scrutiny. So far other questions raised by Learned Counsel for the parties touching upon the merits of the case are concerned, suffice is to say that once we hold that the Calcutta High Court had no territorial jurisdiction, it will not be proper for us to deal with the merits of the case and record any finding thereupon. The Judgments cited by employee do not deal with the aspect of territorial jurisdiction and therefore are of no assistance.

18. Resultantly, the order of Learned Single Judge dated 07th July, 2017 is **set aside**. However, this Judgment will not come in the way of the appellant employee to approach the appropriate forum for redressal of his grievance. It is made

clear that this Court has not expressed any opinion on the merits of this case.

19. The *intra* Court appeal FMA 818 of 2019 is **allowed** to the extent indicated above. The FMA 819 of 2019 is **dismissed**.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)