

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9942 of 2020

Navneet Kumar Yadav Son of Umesh Narain Yadav resident of Village-
Karhara, P.O.- Baisath, P.S.- Benipati, District- Madhubani.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Inspector General, Central Industrial Security Force, South East Zone- II, Kolkata.
3. Deputy Inspector General, Central Industrial Security Force, South Zone- II, Headquarter at Mundali (Orissa).
4. Deputy Inspector General, Central Industrial Security Force, RTC, Utai, Bhilai, Chhatisgrarh.
5. The Commandant, Central Industrial Security Force, P.O.- Nalco Nagar, District- Angul (Orissa).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Narain Yadav, Adv. Mrs. Pooja Shree, Adv. Mr. Masoom Alam, Adv. Mr. Niraj Prasad Sinha, Adv.
For the U.O.I.	:	Mr. Awadhesh Kumar Pandey, Sr. CGC Mr. Arvind Kumar, CGC Mr. Lokesh, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-07-2026

Heard Mr. Suraj Narain Yadav, learned Advocate for the petitioner and Mr. Awadhesh Kumar Pandey, learned Senior CGC duly assisted by Mr. Arvind Kumar, learned CGC for the respondent-Union of India.

2. The petitioner was duly selected and appointed as Constable/GD in CISF vide Letter No. 674 dated 21.03.2017, issued by the CISF Unit, Patliputra, Patna; subsequently he was directed to report at R.T.C. (Regional Training Centre),



Mundali, Battalian No. 2, Odisha on 04.05.2017 for joining and undergone basic training. The petitioner in compliance with the order aforesaid, submitted his joining on 04.05.2017 and participated in the training program. In the meanwhile vide movement order issued by the Deputy Commandant, CISF, TTPC, Talchar, the petitioner was directed to report R.T.C., Bhilai on 16.10.2018. He submitted his joining; and while undergoing training, he applied for ten days leave with effect from 18.10.2018 but was granted leave for seven days from 18.10.2018 to 24.10.2018.

3. Despite the leave application granted for only seven days, the petitioner remained absent for 137 days, which led to an enquiry after framing of due charges and on completion of the enquiry, the Enquiry Officer returned his finding of guilt that the charges stood proved; based upon which the petitioner was inflicted with the punishment of removal from service with immediate effect. The appeal preferred by the petitioner also came to be rejected. The revision was also filed, but it met with the same fate and the Revisional Authority rejected the revision.

4. Aggrieved, the petitioner has invoked the jurisdiction of this Court by filing the present writ petition seeking following reliefs:-

“1. That this is an application



for issuance of a writ in the nature of Certiorari to quash the order as contained in letter no. 1759 dated 28/29.05.2020 passed by the respondent no. 3 by which he rejected the appeal of the petitioner and also to quash letter no. 204 dated 18.01.2020 passed by the respondent no. 5 by which the petitioner has been removed from service with immediate effect and also to quash the entire departmental proceeding initiated against the petitioner by letter no. 1315 dated 30.04.2019 of the respondent no. 5 and further for issuance of writ in the nature of Mandamus and/or any other appropriate writ, order or direction commanding upon the respondents to reinstate the petitioner in service and grant him all consequential benefit.

2. To quash the Order of the Respondent no.2 as contained in letter no. 3349 dated 16.03.2021 by the revision application filed by the petitioner has been rejected.”

5. At the outset, Mr. Pandey, learned Senior CGC has made a preliminary objection with regard to the maintainability of the writ petition on the ground that this Court having no territorial jurisdiction must not consider the claim of the petitioner. It is submitted that the initiation of the departmental proceeding and the enquiry, which culminated into removal of the petitioner and its affirmance in the appeal and revision have taken place in Odisha and Chattisgarh and, as such, the present writ petition is not at all maintainable.



6. To support the aforesaid contention, heavy reliance has been placed on a decision rendered by the Hon'ble Apex Court in the case of ***Oil and Natural Gas Commission Vs. Utpal Kumar Basu & Ors., (1994) 4 SCC 711***. Further reliance has also been placed on a Division Bench decision of this Court in the case of ***Amar Kumar Choubey Vs. The Union of India & Ors., (2009) 1 PLJR 553***. Reference has also been made on a co-ordinate Bench's decision rendered in the case of ***Sunil Kumar Yadav Vs. The Union of India & Ors., (2016) 3 PLJR 870***.

7. Referring to the aforementioned decisions, it is submitted with all vehemence that mere correspondences to a delinquent on his native place, in no circumstances, be treated as a cause of action and, as such, the petitioner ought to present his writ petition before the Hon'ble High Court of Odisha and Chattisgarh, where the actual cause of action has arisen.

8. On the other hand, learned Advocate for the petitioner Mr. Suraj Narain Yadav, has submitted that the facts are admitted to the extent that the petitioner was duly appointed and posted as a Constable/GC in CISF by Commandant, CISF Patliputra and he has submitted his joining, accordingly. Since the petitioner was on training and it was not a regular posting, in



the meanwhile, on account of serious ailment, he was undergoing treatment in Darbhanga Medical College & Hospital, Darbhanga and all the correspondences have been made in his native place in the State of Bihar, the cause of action has arisen before this Court and accordingly, he preferred the present writ petition.

9. To strengthen his submission, reliance has been placed on a decision rendered by the Hon'ble Supreme Court in the case of *Nawal Kishore Sharma Vs. Union of India & Ors., (2014) 9 SCC 329*. It is further submitted that certain facts are also relevant for consideration of the case on merit that once the petitioner had submitted for his leave on 16.10.2018, he was granted leave for seven days. But, in the meanwhile, he fell ill and he filed a petition on 22.10.2018 with medical prescription for extending his leave for further five days and accordingly, the leave was extended and he was directed to report for training on 30.10.2018, but the petitioner could not report because of his illness.

10. The petitioner though was reported to have over stayed on leave for 30.10.2018, but prior to that on 28.10.2018, he had submitted representations stating therein that he has been referred to Darbhanga Medical College & Hospital, Darbhanga



by Primary Health Centre, Benipatti for his treatment by Ortho Specialist. To support the aforesaid contention, he has brought on record all the medical prescriptions. Since the petitioner was advised bed-rest for two months, on account of serious spinal ailment, the petitioner could not submit his joining and, in the meantime, on 13.11.2018/30.11.2018, the petitioner was given further notice to report along with the medical documents and get treatment from empaneled hospital. Finally, the petitioner was served with Letter No. 993 dated 06.02.2019 issued by the Commandant, CISF, RTC, Bhilai, whereby the disciplinary proceeding was initiated against him for the charge of over staying on leave of total 137 days.

11. Taking this Court through the charges and the enquiry report as well as the order of punishment, it is submitted that certain procedures have been flawed by the Enquiry Officers as well as disciplinary authority, but instead of assailing the order on the point of infirmities on the procedure, he submitted that since the order of removal is disproportionate to the charges of absence, hence the order should be set-aside on this score alone.

12. To bolster his submission, he drew the attention of this Court to a decision rendered by the learned Division Bench



of this Court in *Sumit Kumar @ Sumit Kumar Tiwary Vs. The Union of India & Ors., (LPA No. 617 of 2019)*, especially paragraph nos. 7, 8 and 9. It is further urged that it is not the case of absconding from duty or abandonment rather it is the case where the petitioner was on leave for his treatment which extended for some more time and, as such, the removal from service is harsh, punitive and disproportionate to the charges.

13. Refuting the aforesaid contention, Mr. Awadhesh Kumar Pandey, learned Advocate for the Union of India submitted that since the charges of unauthorized absence from disciplinary force has already been proved and the order of the disciplinary authority has been affirmed in the appeal as well as in revision, no interference is required. The conduct of the petitioner is also writ large that earlier also, he remained absent unauthorizedly for few days, due to which he was inflicted with the punishment though it was a minor punishment, but while passing the impugned order, the disciplinary authority can look into the past conduct of the delinquent; further while exercising the power of judicial review, if there is no infirmity in the disciplinary proceeding, the punishment inflicted by the disciplinary authority should not be interfered unless it really shocks the conscience of the Court.



14. After careful consideration of the submissions advanced by learned Advocate for the respective parties and on perusal of the materials available on record, this Court finds that before adjudicating the present lis on merit, the petitioner has to pass the test of maintainability of the writ petition, on account of lack of territorial jurisdiction.

15. Before taking note of the series of the decisions rendered by the Hon'ble Apex Court giving quietus to the issue of territorial jurisdiction, it would be apt to take note of the constitutional provision and the 42nd Amendment Act, 1976, through which the amended clause (2) has been incorporated under Article 226 of the Constitution of India, which reads as follows:-

“226.Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any



other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.”

16. On reading of the constitutional amendment, there is no slightest hesitation that the High Court can issue a writ even when the person or the authority against whom the writ is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction.

17. The expression cause of action for the purpose of invoking the jurisdiction under Article 226 (2) of the Constitution of India, the Hon'ble Supreme Court in case of ***Utpal Kumar Basu*** (supra), while setting aside the order passed by the Calcutta High Court on the plea that NICCO came to know of the tender from the publication in the *Times of India* within the jurisdiction of Calcutta High Court, concluded as follows:-

“6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh [ILR (1889) 16 Cal 98, 102 : 15 IA 156] Lord Watson



said:

“... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

18. In case of ***Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr., (2004) 6 SCC 254***, the Hon’ble Supreme Court



held that the cause of action implies a right to sue. The material facts, which are imperative for the suitor to allege and prove, constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It would also be relevant to quote paragraph nos. 9 and 10 of the said judgment, which are reproduced hereinbelow:-

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.”



19. In the aforesaid case, their Lordships further observed in paragraph no. 30 of the judgment that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

20. It would be also worth benefiting to take note of the decision rendered in the case of *Union of India & Ors. Vs. Adani Exports Ltd & Anr., (2002) 1 SCC 567*, wherein the Court while answering the issue with respect to relevance of facts pleaded in support of the cause of action in order to determine the jurisdiction of High Court under Article 226 of the Constitution observed that in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose that the integral facts pleaded in support of the cause of action, which constitute a cause so as to empower the court to decide a dispute. Each and every facts pleaded in the petition does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction, unless those facts pleaded are such which have a nexus or relevance



with the lis.

21. In ***Om Prakash Srivastava Vs. Union of India & Anr., (2006) 6 SCC 207***, the Hon'ble Supreme Court while dealing with the issue of territorial jurisdiction has clarified that the question of cause of action arising within the territorial limits either wholly or in part for filing a writ has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

22. In ***Amar Kumar Choubey*** (supra), the judgment passed by the learned Division Bench of this Court where the prayer for grant of disability pension, in terms of Central Civil Services (Extraordinary Pension) Rules has been reiterated by the learned Single Judge on the ground that this Court had no territorial jurisdiction to entertain the writ petition on the ground that the impugned order came to be passed by the Colonel Assam Rifles in the Office of Directorate General of Assam Rifles, Shillong and only communication has been made to his



home address, held that cause of action on the basis of communication of rejection of claim is wholly misconceived, once from the materials available on record, it suggest that every part of the cause of action has arisen beyond territorial jurisdiction of this Court.

23. Now coming to the decision rendered in the case of ***Sunil Kumar Yadav*** (supra), where the petitioner had challenged the order dated 02.11.2012 issued by the Regional Director, Staff Selection Commission, Karnataka Kerala Region, Bangalore, whereby he has been informed that his name has been withdrawn from the select list on account of non submission of OBC certificate in format. The writ petition came to be dismissed after taking note of various decisions in this line by holding that mere service of notice does not create any cause of action or any fraction of cause of action with this Court to entertain this petition by the High Court at Patna.

24. Lastly we take up the decision in ***Nawal Kishore Sharma*** (supra) on which heavy reliance has been placed by learned Advocate for the petitioner; it would be proper to highlight the facts of the case under which the order has been passed. In the said case, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing



problem which forced him to stay in his native place in Bihar, wherefrom he has been making all correspondence with regard to his disability compensation allegedly due from Shipping Corporation of India, having rendered almost 23 years of service before being declared permanently unfit for service on medical ground. All the correspondences/reply, including rejection of claim for disability pension, were addressed to him at his native place.

25. In the writ petition, the learned Single Judge held that as no cause of action or in part for filing a writ petition has arisen within the jurisdiction of this Court, the writ petition was held not maintainable. The matter has finally come up for consideration before the Hon'ble Supreme Court and the Hon'ble Court finally held and answered the question whether the service of notice was an integral part of the cause within the meaning of Article 226(2) of the Constitution of India must depend upon the nature of the order giving rise to a cause of action. The Court further observed that considering all the facts together, including the facts that respondent Union of India instead of raising objection as to territorial jurisdiction at the time of interim order opposed only grant of interim order and since part of fraction of cause of action did arise within the



jurisdiction of the High Court where appellant received letter of refusal disentitling him from disability compensation, where he was forced to stay due to said disability held cause of action partly arose at his native place.

26. After careful consideration of all the decisions rendered hereinabove, one thing which is evident that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial jurisdiction of any High Court has to be decided in the light of the facts and character of the proceedings under Article 226 of the Constitution. It hardly needs to be emphasized that in order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction.

27. Coming to the facts of the case, admittedly the petitioner was duly selected and appointed as Constable/GD in CISF vide Letter No. 674 dated 21.03.2017 issued by the C.I.S.F. Unit, Patliputra, Patna and whereupon he was sent to the Regional Training Centre at Mundali, Odisha for basic training and later on, to different training centre at RTC, Bhilai, where he applied for extra ordinary leave.



28. Upon the leave having been granted, he returned to his native place but on account of numbness in left side of lower limb, he has to undergo treatment and referred to DMCH, Darbhanga. The fact of illness and his undergoing treatment has been reported to the authorities concerned and he was asked to report along with all medical documents in the training centre and get treatment in empaneled hospital through various list.

29. Simultaneously, petitioner submitted representation along with medical prescriptions and requested for extension of leave, but this did not persuade the Commandant, CIST, RTC, Bhilai under which he was carrying on training. This incidence led to disciplinary proceeding against the petitioner for charge of unauthorized stay. However, the said disciplinary proceeding was cancelled and a fresh proceeding has been initiated by the CISF, TTPC, Talchar.

30. The moment the petitioner came to know, rushed to the CISF, RTC, Bhilai and submitted his joining, but the same was not accepted and the petitioner was served with memo of charge along with list of documents and the enquiry was conducted and finally enquiry report was communicated to the petitioner, which was duly responded and on being found unsatisfactory, the Commandant, CISF, Nalco Unit, Angul



(Odisha) communicated the order of punishment for removal from service with immediate effect. The appeal and the revision preferred by the petitioner also came to be rejected and the orders have been communicated to the petitioner.

31. One thing which is evident from the facts that firstly the petitioner was under training upon his initial appointment in CISF, Patliputra, Patna and while he was in his native place, he referred to DMCH, Darbhanga where his treatment was going on and from where all the correspondences have been made explaining the position that he is not on unauthorized leave, rather under extra ordinary compelling circumstances, he was forced to undergo treatment.

32. This Court is also constrained to consider that the writ petition was filed in the year 2020 and now the pleadings are also complete and once we shall go by the strict interpretation of all the orders that these facts are not sufficient enough to constitute a cause of action, the petitioner has to face another jolt of harassment. Keeping in mind that technicalities must not defeat the substantial justice, this Court is of the opinion that since the charge, which led to removal of the petitioner on unauthorized absence, which incidence has taken place in the State of Bihar constitute a cause of action, hence the



preliminary objection of the respondent Union of India with regard to maintainability of the writ petition on account of the Court having no territorial jurisdiction is hereby ruled out and the plea stands rejected.

33. Now coming to the merit of this case, this Court has no slightest hesitation that if the Constable/Personnel of a disciplined force remained absent from duty without any information, his absence constitute a serious misconduct and the punishment of dismissal is proportionate to such charge.

34. Since the facts of this case have already been discussed in details in the foregoing paragraphs, it would not be appropriate to reiterate the same herein again. However, one thing which is evident that the present is not a case where the petitioner left his duty without any communication rather he went on leave by taking permission from the authorized Officer, but on account of serious ailments, he was referred to DMCH, Darbhanga for the treatment and later on, he submitted his application along with all the medical reports for extension of his leave and the same was extended for a short period, but by reason or the other, subsequently his request was turned down and in this way, he remained on leave unauthorizedly for 137 days, which led to initiation of departmental proceeding and his



dismissal.

35. The imposition of major penalty for remaining absent for 137 days in the facts and circumstances of this case *prima facie* appears to be too harsh and shocks the conscience of this Court, especially when the petitioner immediately after recovering from the illness submitted his joining and participated in all the proceedings bonafidely.

36. Before parting further this Court also take note of the decision in ***Yasodhar Kamat Vs. Director General, Border Security Force & Ors., (2021) 13 SCC 333*** where the Hon'ble Supreme Court taking note of the long service of a Constable in BSF and his application for extension of leave, though belatedly has observed that his conduct could not be condoned, but the imposition of penalty of dismissal has been held to be disproportionate to the charges of unauthorized overstay.

37. Similar issue with regard to unauthorized absence of a Constable has come up for consideration before the learned Division Bench of this Court in ***Sumit Kumar @ Sumit Kumar Tiwary*** (supra) where the Constable of Central Reserve Police Force overstayed for 196 days on account of treatment of his mother, who was suffering from cancer, but his plea was not accepted and the documents submitted by him have not been



taken into account either by any of the respondent authorities or by the learned Single Judge. The learned Division Bench while setting-aside the order of the learned Single Judge as well as the order of punishment passed by the disciplinary authority and the appellate revisional order has held that *“Keeping in view all the facts and circumstances of the case, we are very much conscious of the fact that absence of the appellant from duty cannot be equated with the person who is said to be unauthorized absence from his duty. On the said score, dismissal of appellant from service is totally disproportionate to the conduct committed by the appellant. For the end of justice, we have to take sympathetic approach towards the appellant in the given facts and circumstances of the case that appellant has reason to leave the place of posting.”*

38. The learned Division Bench thus further directed the concerned respondents to regulate services in accordance with law and allow him to join and extend the monetary benefits with a further order that his unauthorized absence be treated as leave in his credit, as per provision applicable in the case of the appellant while imposing any of the minor penalty.

39. Considering the entire gamut of the facts, this Court also finds that the order of dismissal of the petitioner in



the facts and circumstances of this case is disproportionate to the charge of unauthorized absence of 137 days, where the petitioner was under treatment and had been submitting continuous application/representation along with medical certificates for extension of his leave in extra ordinary circumstances and once such medical prescription/certificate has not been distrusted, in such circumstances, the impugned order as contained in Letter No. 204 dated 18.18.01.2020 of dismissal is wholly unwarranted and accordingly, held to be unsustainable and is hereby set-aside.

40. Once the order of dismissal stood set-aside, the appellate order as well as revisional order also do not survive and the same are also hereby set-aside.

41. The concerned respondents are hereby directed to reinstate the service of the petitioner, in accordance with law. However, it is made clear that the petitioner shall not be entitled for the salary and other emoluments, the period in which he remained outside the service, which shall though be counted notionally for all other benefits. The unauthorized absence be treated as leave in his credit, as per the provision applicable while imposing any of the minor penalty/warning.

42. It is expected that the above exercise shall be



undergone within a period of two months, from the date of receipt/production of a copy of this order.

43. The writ petition stands allowed to the extent indicated hereinabove.

44. There shall be no order as to cost.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2026
Transmission Date	NA

