

(2008) 12 PAT CK 0001
In the Patna High Court
Case No : LPA No. 827 of 2007

Amar Kumar Choubey

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2), 32

Citation : (2009) 1 PLJR 553

Hon'ble Judges : Mihir Kr. Jha, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Harendra Kumar Singh, for the Appellant; Maqboot Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, JJ.—This appeal arises out of an order dated 12.9.2007 passed in CWJC No. 5633 of 2006 whereby and whereunder the prayer of the appellant/writ petitioner for grant of disability pension in terms of Central Civil Services (Extraordinary Pension) Rules has been rejected by the learned Single Judge on the ground that this Court had no territorial jurisdiction to entertain such writ application, directed against an order dated 10th November, 2005 passed by the Colonel Assam Rifles in the Office of Directorate General of Assam Rifles, Shillong refusing grant of such disability pension. Facts giving rise to this writ application lies in a very narrow compass. The appellant/writ petitioner was enrolled as a recruit on general duty in Assam Rifles on 11.5.1989 and after completion of his recruit training was posted to 4 Assam Rifles. On 13th August, 1991 while on convoy duty, the appellant/writ petitioner sustained gun shot injuries in an ambush at general area Gomnom, Ukhrul District, Manipur at a point of time he had completed only two years, three months and two days of his service. Followed by the injury, the appellant/writ petitioner was placed in medical category by the medical officer and when the unit was deployed at Tuensang Nagaland the appellant/writ petitioner on compassionate grounds was kept at the

Rear which was in Jorhat to ensure his periodical access to medical facilities at 5 Air Force Hospital, Jorhat. Further on turnover when the unit was scheduled to move from Tuensang, Nagaland to Mantripukhri, Manipur in January 2004, the appellant/writ petitioner approached the authority for invalidation out of service with invalid pension. His such request was allowed and accordingly, after rendering 14 years, 8 months and 15 days of qualifying service the appellant/writ petitioner was invalidated out of service on 1st December, 2004. It is also an admitted fact that the appellant/writ petitioner was boarded out on invalid pension @ 1,913/-per month with effect from 1st of December, 2004 and his entire dues by way post retirement benefit were paid.

2. The appellant/writ petitioner, being a permanent resident of village Pithauri Tawakal Tola in the district of Saran of this State had thereafter settled at his permanent native place and it is his case in paragraph No. 14 of the writ application that for the first time, he had raised his claim for payment of disability pension in the month of May, 2005 which was followed by his representation dated 17.10.2005 to various authorities including the Home Minister of the Government of India. The impugned order rejecting such claim for grant of disability pension was thereafter passed by the Colonel (Recruit) of the Office of Directorate General of Assam Rifles, Shillong on 10.11.2005 which was communicated to the appellant/writ petitioner at his permanent village home address at Pithauri Tawakal Tola in the district of Saran. It was this impugned order dated 10.11.2005 which was sought to be assailed in the writ application CWJC No. 5633 of 2006 filed in this Court on 1.5.2006 which as noted above came to be dismissed by the impugned order on the ground of this Court lacking territorial jurisdiction to entertain the writ application of the appellant/writ petitioner.

3. Learned Counsel for the appellant/ writ petitioner had raised a short but very attractive submission. He had contended that the view taken by the learned Single Judge that the writ petition was not maintainable on the ground of lack of territorial jurisdiction of this Court suffers from both factual and legal error inasmuch as the impugned order dated 10.11.2005 denying the appellant/writ petitioner of being granted disability pension came to be passed after he had been invalidated out of service on 1.12.2004 and the same was communicated to him at his native village which was admittedly within the territorial jurisdiction of this Court. Thus, treating the communication of rejection of the request of grant of disability pension to be the cause of action learned Counsel has repeated the same submission which were noted and rejected by the learned Single Judge. A strong reliance, however was placed on the judgment of Division Bench of this Court in the case of Rameshwar Prasad Vs. The Union of India (UOI) and Others, . Learned Counsel in fact had also referred to the provisions of the Central Civil Services (Pension) Rules, 1972 (hereinafter to be referred to as CCS. Pension Rules) and Central Civil Services (Extraordinary Pension) Rules [hereinafter to be referred to as the CCS. (E.O.P.) Rules] to impress upon this Court that as the appellant/writ petitioner had been granted disability certificate

to the effect that his disability was of 80% and permanent in nature, he was definitely entitled to grant of disability pension in terms of the Rules.

4. Learned Counsel for the respondents however, while supporting the findings and the conclusion of the impugned order had submitted that the cause of action for grant of disability pension in terms of the Rules had arisen in the State of Manipur on 13.8.1991 and the same also got extinguished after a period of five years in terms of Rule 6 of the Rules inasmuch as the prayer for disability pension had to be made within five years of the injury sustained. Explaining this aspect of the matter, it was further contended on behalf of the respondents that between 13.8.1991 to 13.8.1996 while the appellant/writ petitioner was posted at Manipur or was stationed at Jorhat, not only he had abandoned his claim for grant of disability pension by opting to continue in service but was also retained on compassionate ground at Rear which was in Jorhat by assigning him the duty of a Rifleman on general duty. It has thus been contended that when the appellant/writ petitioner himself continued for more than 13 years of service even after sustaining the injury and ultimately approached the authority for his invalidation out of service with invalid pension, he could not have in fact even raised a claim for disability pension inasmuch as he had already been sanctioned and paid his entire retirement benefit including invalid pension in terms of Rule 38 of the CCS. Pension Rules.

5. The learned Counsel for the respondents in order to support his aforementioned submissions had also placed reliance on judgment of the Apex Court in the case of Aligarh Muslim University v. Vinay Engineering Enterprises Ltd., (1994) 4 SCC 710, Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, . He had also referred to several unreported judgments/orders annexed with the counter affidavit filed in the writ application of this Court, Delhi High Court, Allahabad High Court, Himachal Pradesh High Court, Punjab and Haryana High Court which were made part of the counter affidavit of the respondents filed in the writ application,

6. In the light of the aforementioned submissions, the one and the only question which would arise for determination is as to whether there is any error in the view taken by the learned Single Judge with regard to the complete lack of territorial jurisdiction of this Court in entertaining the writ application.

7. There is absolutely no dispute that the claim of the appellant/writ petitioner for being allowed and paid disability pension in preference to Invalid Pension is based on the scope and applicability of CCS. (Pension) Rules and the Rules which govern in two separate and altogether different circumstances,. From a bare perusal of the Scheme under Chapter-7 of CCS. (Pension) Rules it would emerge that the pension therein has been classified six categories:-

(a) Superannuation pension (Rule 35),

- (b) Retiring pension (Rule 36),
- (c) Pension of absorption in or under a corporation, company or body (Rule 37),
- (d) Invalid pension (Rule 38),
- (e) Compensation pension (Rule 39),
- (f) Compulsory retirement pension (Rule 40),
- (g) Compassionate allowance (Rule 41).

8. It has to be also taken note of that the concept of disability pension emanates from the CCS. (E.O.P.) Rules which is a special provision to cover cases for grant of pension to a person who either sustains wound injury or disease or succumbs to anyone of them in course of his being on duty in Government service. At this place, it would also be significant here that under the instructions issued by the Government of India in the Department of Pension and Personnel Welfare in its OM No. 45/86/97-P&PW(A) dated 7.8.2001, it has been also clarified that disability pension under the CCS. (E.O.P.) Rules and invalid pension under CCS. Pension Rules are altogether distinct in scope application and quantum.

9. A bare comparison in fact of the provisions of invalid pension as defined and explained in Rule 38 of the CCS Pension Rule vis-a-vis the provision of disability pension under the CCS. (E.O.P.) Rules would therefore go to show that disability pension has to be granted only on fulfillment of certain strict and specified terms and conditions under Rule 3(a) and 6 thereof on satisfying that such injury or disease was attributable to Government servant while on duty in Government service on account of which he had to be permanently sent out of service. On the other hand an invalid pension under Rule 38 of CCS. Pension Rules can be granted on a request of the Government servant choosing to retire voluntarily from the service on account of any bodily or mental infirmity not necessarily incurred in course of his duty while in Government service. This aspect of the matter becomes itself clear from a bare perusal of Rule 38(1) of the CCS. (Pension) Rules, which reads as follows:-

"38. Invalid pension.-(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service."

10. Thus, on a conjoint reading of the provisions of invalid pension and disability pension, it would become clear that when the appellant/writ petitioner despite sustaining injury on 13.8.1991 elected and opted to continue in service for next 13 years by replacement on his right thigh by using surgical platform boot, he had himself voluntarily abandoned his claim for being granted disability pension. Such fact that the appellant writ petitioner in fact continued in active service for next 13 years and ultimately had requested for his retirement and being granted invalid pension in 2004 at a point of time when his unit was to move from Nagaland to Manipur in January, 2004 as specifically asserted in paragraph No. 6

of the counter affidavit of the respondents been admitted by the appellant/writ petitioner in paragraph No. 10 of the rejoinder affidavit filed by him at the stage of writ application wherein it has been stated that-".....the petitioner did not approach the respondents for his discharge but he expressed his disability for field service in Nagaland....." It would thus be clear that the petitioner by his own conduct had opted for invalid pension after continuing in service for more than 13 years after giving up his claim for disability pension within 5 years of sustaining such injury in the year 1991.

11. Judged in this background, there would be no difficulty in holding that the cause of action for the appellant/writ petitioner to claim and earn his disability pension under the CCS. (E.O.P.) Rules was waived by his conduct of continuing in service even beyond a period of five years from the date of sustaining of his injury. As a matter of fact, when the appellant/ writ petitioner with his replacement of his right thigh by using of surgical platform boot fitted in his right thigh had continued in service till 1st December, 2004, he cannot be heard to say that his cause of action for disability pension in terms of CCS. (E.O.P.) Rules arisen on or after his retirement on 1.12.2004, while being stationed at his village home in the State of Bihar inasmuch as the benefit of disability pension could be claimed by him only till 12th August, 1996 when he was still continuing in service at Jorhat in the State of Assam. It is in this context that Rule 6 of CCS. (E.O.P.) Rules assumes significance, which reads as follows:-

"6. No award shall be made in respect of- (i) an injury sustained more than five years before the date of application, or

(ii) death which occurred more than seven years:-

(a) after the injury due to violence or accident was sustained, or

(b) after the Government servant was medically reported as unfit for duty on account of the disease of which he died."

12. Counsel for the respondent therefore, is quite justified in contending that as the date of sustaining injury of the appellant/writ petitioner was 13.8.1991, he could not have allowed to create a cause of action for grant of disability pension in terms of the aforementioned Rule 6 of CCS. (E.O.P.) Rules by filing an application for the first time in the month of May/ October, 2005 from his village home in the district of Saran of the State of Bihar. As a matter of fact, the claim for disability pension of the appellant/writ petitioner having been not raised by him on or before 13th of August, 1996 the same had got permanently eclipsed by his own conduct of continuing in service for next eight years and opting out of service on his own request seeking retirement and invalid pension w.e.f. 1.12.2004 in terms of Rule 38 of the CCS Pension Rules.

13. In view of all these admitted facts, it must be held that no part of cause of action for filing of a writ application, claiming payment of disability pension from the respondents had arisen within the territorial jurisdiction of this Court. As

noted above, the appellant/writ petitioner sustained injury at Gomnom in Ukhrul district, Manipur while being on duty in Assam Rifles and thereafter, remained posted at Jorhat in capacity of Rifleman on general duty from August, 1991 till 1st December, 2004. Thus any and every part of his cause of action for claiming grant of disability pension had arisen beyond the territorial jurisdiction of this Court and the contention of the learned Counsel for the appellant/writ petitioner that as the communication refusing grant of disability pension was made to his permanent village home address the district of Saran of the State of Bihar within the territorial jurisdiction of this Court by itself given him a cause of action to maintain his writ petition is wholly misconceived and must be rejected.

14. In this context, one must take note of the relevant provisions of 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 powers, 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 by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3)

(4)"

15. it would thus appear that the touchstone for exercise of jurisdiction under Article 226 of the Constitution of India squarely depends to the territories in which the cause of action had arisen either in whole or in part. This aspect of the matter as to what would be the cause of action within the meaning of Article 226(2) of the Constitution of India is no longer *res integra* and reference in this connection may only be made to the following passage of the Apex Court in the case of *Kusum Ingots & Alloys Ltd.* (*supra*):-

"6. 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. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is

beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily."

16. As a matter of fact, the Apex Court in aforesaid case has also laid down as a proposition of law 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 relief is a material fact which is also known as integral facts. It was in this context that the Apex Court had also made the following observations:-

"18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court."

17. Similar view in fact has been taken by the Apex Court in the case of National Textile Corpn. Ltd. (supra) wherein it was held that:-

10. Under clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India vs. Adani Exports Ltd. in context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ 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 that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. A similar question was examined in State of Rajasthan vs. Swaika Properties. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice u/s 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land u/s 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the

Constitution for quashing the notice issued by the Rajasthan Government u/s 52 of the Act. It was thus held that the Calcutta High Court had no jurisdiction to entertain the writ petition."

18. The submission advanced on behalf of the learned Counsel for the appellant/writ petitioner that as the order rejecting the request of the petitioner for grant of disability pension was served on the appellant/writ petitioner within the territorial jurisdiction of this Court, a part of cause of action had arisen within the meaning of Article 226(2) of the Constitution of India so as to maintain writ application filed by the appellant/writ petitioner is only to be noticed for its being rejected. Mere service of notice or a communication is neither an integral fact much less material fact forming part of cause of action. In the present case, when the appellant/writ petitioner had sustained injuries in the State of Manipur and was subsequently retained in service for next 13 years in the State of Assam (at Jorhat), his claim for disability pension in terms of Rules arose and got extinguished within a period of five years in terms of Rule 6 of the Rules in the State of Assam itself. That being so, if the appellant/writ petitioner after he opted out of service with his invalid pension as per his own request w.e.f. 1.12.2004 in terms of Rule 38 of CCS. (Pension) Rules, his wholly belated and impermissible request for grant of disability pension in the year 2005 and its rejection by the Colonel, Assam Rifles, the competent authority of the Director General of Assam Rifles having its Headquarter at Shillong in the State of Meghalaya by his order dated 10.11.2005 did not furnish any part of cause of action for maintaining a writ application before this Court merely because the said order dated 14.11.2005 rejecting his request for grant of disability pension was communicated to the appellant/writ petitioner at his permanent village home address in the district of Saran of the State of Bihar. This aspect of the matter as to whether communication itself would constitute a cause of action for maintaining writ application was also directly considered by the Apex Court in the case of State of Rajasthan and Others Vs. Swaika Properties and Another, wherein after extracting the definition of expression "cause of action" from Mulla's Code of Civil Procedure, the Apex Court had held as follows:-

"The mere service of notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench."

19. The place of residence or place of communication in fact can never be by itself a determinative factor for deciding the cause of action in terms of Article 226(2) of the Constitution of India is a well settled proposition in law. Reference in this connection may also be made to the judgment of the Apex Court in the case of Aligarh Muslim University (supra) wherein it was held that:-

"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The Arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

20. As a matter of fact, this aspect of the matter was also considered in detail by the Apex Court in the case of Oil and Natural Gas Commission (supra) wherein it was held that merely because the writ petitioner submitted a tender and made representation from Calcutta in response to an advertisement inviting tenders which were to be considered at New Delhi and the work was to be performed at Hazira (Gujarat) it could not have maintained its writ application in Calcutta High Court on the basis of its representation made and reply received through the FAX Message at Calcutta as receipt of such communications did form an integral part of cause of action. The Apex Court in fact in this regard while deprecating entertaining of the writ application by Calcutta High Court had also put a note of caution in the following words:-

"It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred, within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

21. The reliance placed by the learned Counsel for the appellant/writ petitioner on the judgment of the Division Bench of this Court in the case of Rameshwar Prasad (supra) is also wholly misplaced inasmuch as in that writ application the issue involved was with regard to an order of dismissal which could become effective only when it was communicated or made known to the person concerned. It was in that regard that the Division Bench of this Court had held that once the writ petitioner was on unauthorized leave and was dismissed from service by an order passed at Srinagar, the cause of action for the writ petitioner

had arisen only upon the service of the order of dismissal within the territorial jurisdiction of this Court. Apparently, the ratio of an order of dismissal and its service cannot be made applicable as with regard to the claim of refusal of disability pension for which each and every part of cause of action to the appellant/ writ petitioner had arisen either in the State of Manipur or in the State of Assam or in the State of Meghalaya. Similarly, the reliance placed by the learned Counsel for the appellant on the judgment of Court in the case of Brig. Ashok Malhotra Vs. The Union of India (UOI) and Others, is also wholly misconceived inasmuch as therein the Division Bench of this Court had found that the impugned order of his supersession had been communicated to the writ petitioner Brig. Ashok Malhotra while he had been working at Danapur on his posting as Commander of Bihar and Orissa Sub-Area, Danapur Cantonments. It was in this context, that this Court had held that supersession of an army official still continuing in service who was posted within the territorial jurisdiction of this Court and was communicated of an order to this effect was maintainable before this Court. Suffice to say that the appellant/writ petitioner had already retired and had in fact been also given full retirement benefit including invalid pension and as such, he cannot be heard to say that his any part of retirement benefit had been withheld. The claim of the writ petitioner in fact as with regard to his disability pension to which he was not even entitled under the CCS. (E.O.P.) Rules, having been made after the retirement in 2005 from his village home its refusal by the authorities from the Headquarter of the Assam Rifles at Shillong therefore could not have given cause of action to the appellant/writ petitioner to maintain his writ application before this Court merely because such communication was received by him within the territorial jurisdiction of this Court.

22. In view of what has been held above, the findings and the conclusion arrived at by the learned Single Judge in dismissing the writ application for want of territorial jurisdiction in terms of Article 226(2) of the Constitution of India does not suffer from any error and therefore it must be held the writ application had been correctly dismissed by the learned Single Judge. This Court, however must clarify that as the learned Single Judge in the impugned order has given liberty to the appellant/writ petitioner by preserving his right to take such recourse to law as he may be advised pertaining to his claim of disability pension, any observation made above in this judgment with regard to the merits of such claim of the appellant/writ petitioner will not prejudice his case inasmuch as such observations have been made only for finding out the cause of action for maintaining of the writ application.

Chandramauli Kumar Prasad, J.

23. I agree.