

(2025) 03 DEL CK 0960

In the Delhi High Court

Case No : Writ Petition (C) No. 17210 Of 2024

Comptroller And Auditor General Of India & Ors

APPELLANT

Vs

Nirbhay Kumar Santosh

RESPONDENT

Date of Decision : 04-03-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 10

Administrative Tribunals Act, 1985 — Section 25

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 6, 6(1)(ii)

Citation : (2025) 03 DEL CK 0960

Hon'ble Judges : C. Hari Shankar, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Dr. S.S. Hooda, Aayushman Aeron, Amit Anand

Final Decision : Dismissed

Judgement

C.Hari Shankar, J

1. This is a rare case in which the respondent "CAGI" before the Central Administrative Tribunal "the Tribunal" has assailed an order, dated 18 October 2024, passed by the Hon'ble Chairman of the Tribunal under Section 25 [25. Power of Chairman to transfer cases from one Bench to another. – On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.] of the Administrative Tribunals Act, 1985 "the AT Act" read with Rule 6 [6.Place of filing application. –(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction— (i) the applicant is posted for the time being, or (ii) the cause of action, wholly or in part, has arisen: Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter. Notwithstanding

anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application] of the Central Administrative Tribunal (Procedure) Rules, 1987 "the CAT (Procedure) Rules", in PT 271/2024, retaining the Original Application "OA" filed by the present respondent at the Principal Bench of the Tribunal at Delhi.

2. Given the nature of the controversy, no detailed allusion to facts is required. The impugned order, which is brief, may be reproduced in extenso:

"Order of The Tribunal

Heard learned counsel for the respective parties.

This P.T. has been filed by the applicant with a prayer to retain the proceedings of the subject O.A. in the Principal Bench at New Delhi. In the subject O.A., the applicant has prayed for the following reliefs:-

"(i) to quash and set aside the Impugned Order/Letter no-1092 dated 10/11/2023 and letter No- 1667 dated 06/10/2022 and passed by the respondents

(ii) to direct the respondents to consider the case of the applicant sympathetically in terms of DoPT OM dated 24.11.2022 and also their own policy, guidelines dated 09.11.2023 and transfer him to the office of the respondent No.4 i.e. O/o PAG (A&E), Patna Bihar."

The applicant is posted in Gwalior, Madhya Pradesh, and his spouse is posted in Patna, Bihar. On the basis of the respondents' own policy to post the husband and wife at the same station, the applicant filed a representation to the respondents to post him in Patna, Bihar, which was rejected by respondent No.2. This rejection order is challenged in the subject O.A., with a direction to transfer him in the office of respondent No.4, which is located in Patna, Bihar.

Mr. Amit Anand, learned counsel appearing for the applicant invited my attention to the communication dated 06.08.2021, which is placed at p.84 of the O.A. This communication is addressed by respondent No.1 to all the Heads of Department in the IA & AD, Director General (Commercial) and Director General (Headquarters). Paragraph (4) of the communication reads thus:-

"4. Accordingly, it has been decided by the Competent Authority that requests for deputation/ extension in the tenure of deputation of officials whose spouse is working in Central Government, State Government and Public Sector Undertaking may be considered sympathetically and the Heads of Department should strive to post the official at the station of the spouse. In case of inability to accept the requests for deputation of officials on spouse grounds / extension in the tenure of deputation of officials on spouse grounds, specific reasons along with case details, may be forwarded to Headquarters office for taking final

decision by the Competent Authority. The deputation in such case will, however, not be treated in public interest."

Dr. S S Hooda, learned counsel appearing for the respondents, on the contrary, argued that the issue of jurisdiction of the Principal Bench to entertain the subject O.A. was argued on two dates before the coordinate Bench. However, the Bench was not inclined to accept the jurisdiction of the Principal Bench to hear the subject O.A.; and, therefore, the applicant has filed the instant P.T.

It is the specific case of the applicant that if respondent No.2 is unable to accede to the request of the applicant, in such an eventuality, representation of the applicant was required to be forwarded to respondent No.1, who is located at Delhi, and who is the competent authority to take a final decision on the representation of the applicant. Thus, in my view, part of the cause of action arose in New Delhi.

In the facts and circumstances of the case, coupled with the provisions contained in Section 25 of the Administrative Tribunals Act, 1985 read with Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, I allow this P.T. and retain the proceedings of the subject O.A. before the Principal Bench of this Tribunal at New Delhi.

The Registry is directed to take necessary steps in this regard."

3. Mr Hooda, learned Counsel for the CAGI, has assailed the impugned order on three grounds. His first contention is that the Hon'ble Chairman ought not to have passed the impugned order when an objection regarding the territorial jurisdiction of the Principal Bench to entertain the OA has been taken by the CAGI, and was under consideration before the coordinate Bench which was in seisin of the OA. His second contention is that the Tribunal does not have the power to retain a matter in any Bench, and can only transfer a matter from one Bench to another. His third contention is that, even otherwise, the impugned order is in error in holding that part of the cause of action arose in Delhi. No part of the cause of action, according to Mr Hooda, has arisen in Delhi; ergo, the OA could not have been retained at Delhi.

4. We do not deem it necessary to deal with these contentions, for a simple reason. The impugned order has permitted the OA to be retained at the Principal Bench on the ground that part of the cause of action has arisen within its jurisdiction. If part of the cause of action has indeed arisen within the jurisdiction of the Principal Bench, Rule 6(1)(ii) of the CAT (Procedure) Rules straightway permits institution of the OA at the Principal Bench, and nothing more is needed. The PT would, in such circumstances, in fact be rendered wholly superfluous.

5. It is true that the issue of whether the OA would lie at the Principal Bench was pending when the impugned order was passed by the Hon'ble Chairman. That said, the power of the Hon'ble Chairman to transfer cases from one Bench to another, as conferred by Section 25 of the AT Act is a self-contained independent

power. Section 25 is not made subject to any other provision. It can, therefore, be invoked at any stage. Assuming that the exercise of jurisdiction by the Hon'ble Chairman in the present case was within the parameters of Section 25, such exercise cannot therefore, be said to be illegal merely because, in the substantive OA which was pending before a Coordinate Bench, an objection regarding territorial jurisdiction was taken by the petitioner. Mr. Hooda has not been able to show us any provision or judicial authority which would indicate that the Hon'ble Chairman is proscribed from exercising jurisdiction under Section 25 of the AT Act or Rule 6 of the CAT (Procedure) Rules so long as an objection to territorial jurisdiction has been taken and is pending in the substantive OA before another Bench. In the absence of any such proscription, the Court cannot read, into Section 25 of the AT Act or Rule 6 of the CAT (Procedure) Rules, any bar of exercise jurisdiction by the Hon'ble Chairman, under the said provisions, merely because an objection regarding territorial jurisdiction has been taken before the Bench which is in seisin of the substantive OA.

6. Expressed otherwise, the fact that the respondent has, in the substantive OA, raised an objection regarding territorial jurisdiction, cannot inhibit either party from filing an application under Section 25 of the AT Act before the Hon'ble Chairman, and equally cannot inhibit the Hon'ble Chairman from deciding the said application.

7. We, however, intend to cut things short, by examining, *prima facie*, whether the OA would lie before the Principal Bench.

8. In our view, any objection to territorial jurisdiction would have to be decided on the principles that apply to Order VII Rule 10 of the Code of Civil Procedure, 1908. In other words, the issue has to be decided on the basis of the pleadings in the OA, and the OA alone.

9. Rule 6(1)(ii) of the CAT (Procedure) Rules permits the filing of an OA before the Bench within whose jurisdiction the cause of action has arisen, in whole or in part. The Hon'ble Chairman has, in fact, retained the OA filed by the respondent in Delhi on the ground that the cause of action, at least in part, has arisen in Delhi.

10. The AT Act does not define "cause of action". The peripheries of the expression "cause of action", however, stand demarcated in several decisions of the Supreme Court. Para 17 of the report in *Kunjan Nair Sivaraman Nair v. Narayanan Nair* (2004) 3 SCC 277 approves the following definition, contained in Halsbury's Laws of England:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives

the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action."

Navinchandra N. Majithia v. State of Maharashtra (2000) 7 SCC 640 approves Stroud's definition of "cause of action" as being "the entire set of facts that gives rise to an enforceable claim ... every fact, which if, traversed, the plaintiff must prove in order to obtain judgment". In Gurdit Singh v. Munsha Singh AIR 1977 SC 640, the Supreme Court held thus, with respect to the expression "cause of action":

"The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense it has been used to denote the whole bundle of material facts which a plaintiff must prove in order to succeed."

State of Rajasthan v Swaika Properties AIR 1985 SC 1289, A.B.C. Laminart (P) Ltd. v A.P. Agencies AIR 1989 SC 1239, Bloom Dekor Ltd. v Subhash Himatlal Desai (1994) 6 SCC 322, ONGC v Utpal Kumar Basu (1994) 4 SCC 711, Hari Shanker Jain v Sonia Gandhi (2001) 8 SCC 233 and Rajasthan High Court Advocates' Association v UOI AIR 2001 SC 416 endorse the following definition of the expression "cause of action":

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant."

That the bundle of facts which have to be proved by the plaintiff in order to succeed in his plaint constitutes "cause of action" for instituting the suit is the view taken by the Supreme Court, additionally, in South East Asia Shipping Company Ltd. v Nav Bharat Enterprises (P) Ltd. (1996) 3 SCC 443, Kusum Ingots & Alloys Ltd. v UOI (2004) 6 SCC 254, U.O.I. v Adani Exports Ltd. (2002) 1 SCC 567, Liverpool & London S.P. & I Assn. Ltd. v M.V. Sea Success I (2004) 9 SCC 512, and National Textile Corporation Ltd. v Haribox Swalram (2004) 9 SCC 786 further clarified the position by declaring that "each and every fact pleaded by a party in his petition does not ipso facto lead to conclusion that those facts give rise to cause of action unless those facts have a nexus or relevance with a lis that is involved in the case".

11. The issue of whether any part of the cause of action, in the present case, did or did not arise in Delhi, has, therefore, to be decided on the basis of the prayers in the OA. The actual merits of the case cannot constitute a legitimate consideration in arriving at this decision.

12. The respondent has, in his OA, advanced two substantive prayers. The first is, to set aside letters dated 6 October 2022 and 10 November 2023. The second is for a direction to direct the CAGI to consider the case of the respondent

sympathetically in terms of DOPT OM dated 24 November 2022 and the CAGI's Policy Guidelines dated 9 November 2023 and thereby transfer him to Patna.

13. The impugned order notes reliance placed by the respondent, on Circular dated 6 August 2021 issued by the CAGI at New Delhi. It refers to the earlier guidelines issued by the Department of Personnel and Training "DOPT" vide OM dated 30 September 2009 regarding deputation of officials on spouse grounds. Paras 3 and 4 of the said Circular reads thus:

"3. Representations are being received from the officials of IA &AD that requests for deputation or for extension in the tenure of deputation of officials on spouse grounds within IA & AD are not being considered or are being rejected citing administrative reasons by the Cadre Controlling Offices. This is leading to disintegration of family as a unit and hardship to officials.

4. Accordingly, it has been decided by the Competent Authority that requests for deputation / extension in the tenure of deputation of officials whose spouse is working in Central Government, State Government and Public Sector Undertaking may be considered sympathetically and the Heads of Department

22 "DOPT", hereinafter should strive to post the official at the station of the spouse. In case of inability to accept the requests for deputation of officials on spouse grounds / extension in the tenure of deputation of officials on spouse grounds, specific reasons along with case details, may be forwarded to Headquarters office for taking final decision by the Competent Authority. The deputation in such cases will, however, not be treated in public interest.

14. Prayer (ii) in the OA is not directed against any particular respondent in the Tribunal but against all the respondents (i.e. all the petitioners in the present writ petition). The prayer is for a direction to the petitioners, that is, the respondents before the Tribunal, to consider the case of the respondents sympathetically in terms of the DOPT OM dated 24 November 2022 and the petitioner's Policy Guidelines dated 9 November 2023. Thus, the direction that is sought is to all the petitioners which would include the CAGI, who is Petitioner 1 herein.

15. No doubt, if the CAGI has no role to play in the matter, it would not be permissible for the respondent to, by a strained effort, seek to maintain the OA before the Principal Bench by asking for a direction against the CAGI.

16. If, on the other hand, the respondent was within his right in seeking a direction to the CAGI, and the CAGI was empowered to take a decision in the matter, as per the extant Rules or instructions, then no fault can be found with the view of the Tribunal that part of the cause of action arose in Delhi.

17. The Circular dated 6 August 2021 has been issued by the CAGI. When one reads para 4 of the CAGI Circular dated 6 August 2021, two features of the instructions contained in the said paragraph become apparent. The "competent authority", to whom the para refers, is obviously the CAGI. Para 4 first requires the Heads of Departments, who are approached with a request for transfer on

spouse grounds, to consider the request sympathetically and to strive to post spouses at the same station. What follows is more important, for our purposes. Para 4 goes on to require thus:

"In case of inability to accept the requests for deputation of officials on spouse grounds/extension in the tenure of deputation of officials on spouse grounds, specific reasons along with case details, may be forwarded to Headquarters office for taking final decision by the Competent Authority."

Thus, para 4 of the Circular dated 6 August 2021 stipulates that, if the Head of the Office where the employee who seeks spouse transfer is posted is unable to accommodate the request, "specific reasons" alongwith case details, may be forwarded to Headquarter's office for taking final decision by the Competent Authority. The Headquarters office undisputedly is the office of the CAGI in Delhi.

18. The respondent's contention is that the final decision, therefore, is not of the Head of the Office where the employee is posted. It is of the CAGI, who has to be informed as to why the request of the respondent cannot be accommodated.

19. The CAGI is undisputedly located at Delhi, with the territorial jurisdiction of the Principal Bench.

20. The respondent's submission, as noted by the Hon'ble Chairman in the impugned order, is that the final decision on the respondent's representation had, in view of the CAGI Circular dated 6 August 2021, to be taken by the CAGI, and not either by the Principal Accountant General, Patna or the Principal Accountant General, Gwalior. For this reason, the OA incorporates a prayer for a direction "to the respondents" (meaning the petitioners before us) to accommodate the respondent's request for transfer.

21. The jurisdiction to issue such a direction to the CAGI – which the respondent seeks, based on the CAGI's own circular dated 6 August 2021 – unquestionably vests with the Principal Bench.

22. The OA filed by the respondent was, therefore, competent before the Principal Bench of the Tribunal, in view of Rule 6(1)(ii) of the CAT (Procedure) Rules.

23. We, therefore, find no reason to differ with the Hon'ble Chairman in the view that he has taken.

24. The writ petition is dismissed.

25. We make it clear the observations contained in the present order are intended merely to adjudicate on the issue of territorial jurisdiction, and should not be regarded as any expression of opinion on the merits of any of the respondent's claims, including his claim for intervention by the CAGI. We have only adjudicated on the aspect of competence of the OA before the Principal Bench of the Tribunal, based on the prayers of the respondent, and the case that he has set up. The merits of the said case would independently have to be

decided by the Tribunal.

26. Pending applications, if any, do not survive for consideration are disposed of.