
(2010) 03 AHC CK 0214
In the Allahabad High Court
Case No : Special Appeal No. 342 of 2010

Director General, C.R.P.F., New Delhi

APPELLANT

Vs

Lal ji Pandey, (Constable No. 850774845)

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 03 AHC CK 0214

Hon'ble Judges : V.M.Sahai, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.

Heard Sri Udit Chandra holding brief of Sri Subhodh Kumar for the appellant and Sri S. K. Shukla appearing for the respondent.

This intra court appeal has been filed challenging the judgment and order dated 12.12.2002 passed in civil misc. writ petition no. 42351 of 1997 (Constable No. 850774845, Lalji Pandey vs. Director General, C.R.P.F. and others) whereby the impugned punishment order dated 17.03.1994 of dismissal from service, on the charge of unauthorized absence of duty was set aside and the matter was remanded to the punishing authority with a direction that the respondent (petitioner) shall be awarded lesser punishment having regard to the nature and circumstances of the case and in the light of the observations made in the judgment expeditiously preferably within one year from the date of the order. The writ petition was filed by the delinquent employee after exhausting the departmental remedy of appeal as well as the revision before the competent authorities which were rejected.

A preliminary objection has been raised by the counsel for the respondent submitting that the present special appeal is not maintainable in view of the law laid down by the full bench of this Court in the case of Sheet Gupta vs. State of U.P. and others, 2010(1) ADJ1 (FB), as the writ petition was filed challenging the punishment order dated 17.03.1994 of dismissal from service, appellate order

dated 16.06.1996 rejecting the appeal filed against the punishment order of dismissal and the revisional order dated 26.10.1997 rejecting the said appeal by the department.

It is contended that in the Full Bench decision of this Court in the case of Sheet Gupta (supra), it has been held that special appeal will not lie against the order passed by the Single Judge in exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect to any order made in exercise of appellate or revisional jurisdiction under any such Act i.e. under any Uttar Pradesh Act or Central Act.

The learned counsel for the appellant has strongly disputed the preliminary objection and has submitted that special appeal is fully maintainable in view of the fact that the respondent was employed in the central reserve police force established under the Central Reserve Police Force Act, 1949 and the service conditions of the respondent were covered under the rules and regulations framed therein.

The submission of the learned counsel for the appellant is that this Force falls within the category of "any other armed force raised or maintained by the dominion" as mentioned in Paragraph I of List I of the 7th Schedule to the Government of India Act, 1935 or/and as mentioned in Entry 2, List I of the 7th Schedule to the Constitution of India and as per section 3(1) of the C.R.P.F. Act central reserve police force is part of the armed forces of the Union, therefore, the special appeal filed against the order of learned Single Judge in respect to any order passed or purported to be passed in exercise of appellate or a revisional jurisdiction under any central Act with respect to any of the matters enumerated in the Union list in 7th Schedule of the Constitution of India shall be fully maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules.

In order to consider the preliminary objection we first consider the provision of special appeal as provided under Chapter VIII Rule 5 of the Allahabad High Court Rules, which is quoted as under:

"Special Appeal An appeal shall lie to the Court from a judgment (not being judgment passed in the exercise of Appellate Jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction [or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or Revisional Jurisdiction under any such Act] of one judge.]"

Meaning thereby an appeal shall lie to the Court from a judgment not being a judgment passed in the exercise of Appellate Jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being as order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award

(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction

(b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction

under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution.

In the case of *Sheet Gupta vs. State of U.P. and others* (Supra) the Full Bench of this Court had the occasion to consider the following question made by a reference:

"Whether a special appeal under the provisions of Rule 5 of Chapter VIII of the Rules of the Court lies in a case where the judgment has been given by a learned Single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the U.P. Scheduled Commodities Distribution Order, 2004?"

The Full Bench had come to the conclusion that such special appeal will not lie in certain circumstances. The relevant paragraph is quoted below:

"Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances:

1. the judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;
2. the order made by one Judge in the exercise of revisional jurisdiction;
3. the order made by one judge in the exercise of the power of Superintendence of the High Court;
4. the order made by one Judge in the exercise of criminal jurisdiction;
5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

- (i) the tribunal,
- (ii) Court or
- (iii) statutory arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6. the order made by one judge in exercise of jurisdiction conferred by Article 226 and 227 of the Constitution of India in respect of any judgment, order or award of

- (i) the Government or
- (ii) any officer or
- (iii) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the the Seventh Schedule to the Constitution of India."

From bare perusal of the above decision it is very much clear that no special appeal shall lie against the order made by Single Judge in exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of the government or any officer or any authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act i.e. under any Uttar Pradesh Act or under any central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the 7th Schedule to the Constitution of India. Meaning thereby that in case the order under challenge in writ jurisdiction before the learned Single Judge was the order passed by the Government or any officer or any authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Central Act with respect to any of the matters enumerated in the Union List then the special appeal would be maintainable.

It is relevant to notice here that the Central Reserve Police Force Act, 1949 has been enacted in exercise of powers conferred to the Central Government under Paragraph 1 of ListI of 7th Schedule to the Government of India Act, 1935, which is presently Entry2, ListI of the 7th Schedule of the Constitution of India.

Entry 2 of ListI (Union List) of 7th Schedule provides as under:

" Naval, military and air force; any other armed forces of the Union".

In the case of Akhilesh Prasad vs. Union Territory of Mizoram, AIR 1981 Supreme Court 806, it has been held that any other armed force of the Union includes the Central Reserve Police Force. Therefore, it can easily be concluded that the Central Reserve Police Force is covered under "any other armed forces of the Union as provided in Entry 2, List I (Union List) of the 7th Schedule of the Constitution of India.

In view of above, the present special appeal is maintainable and the preliminary objection raised by the respondent having no legal force is hereby rejected.

Learned counsel for the appellant has vehemently urged that impugned judgment and order of the learned Single Judge is not sustainable in the eyes of law as the same has been passed without territorial jurisdiction. It is submitted that the respondent while posted to 113 Battalion C.R.P.F. Hyderabad had absented himself without leave and, therefore, departmental proceedings were conducted against him for misconduct under section 11(1) of C.R.P.F. Act. After completion of disciplinary proceedings the punishment order dated 17.04.1994 was passed by which respondent was dismissed from service. The respondent had availed the opportunity of filing appeal and revision before the higher authorities which were rejected by orders dated 16.06.1996 and 26.10.1997.

The learned counsel for the appellant has urged that the entire departmental proceedings as well as the punishment order dated 17.04.1994, the appellate order dated 16.06.1996 and the revisional order dated 26.10.1997 were passed out side the territorial jurisdiction of this Court and, therefore, no part of cause of action accrued to the respondentpetitioner in the State of U.P. in order to avail the extra ordinary jurisdiction under Article 226 of the Constitution of India of this Court. In support of his submission the learned counsel for the appellant has relied on full Bench Decision of this Court in the case of Rajendra Kumar Mishra vs. Union of India and others, 2005(5) AWC 4542 (FB) and submits that mere being permanent resident in the State of U.P. the respondent does not get any right to file the writ petition before this Court as no part of cause of action has accrued within the territorial jurisdiction of this Court.

Learned counsel for the respondent in reply to the aforesaid submission submitted that writ petition filed by the respondent was fully maintainable in this Court in view of the fact that the impugned orders were communicated to him at Bhadohi (Varanasi) at his residential address. Moreover, the respondent is permanent resident of district Bhadohi and, therefore, this Court has the territorial jurisdiction to decide the writ petition filed by the respondent. In this regard he has pointed out to the Court the order dated 16.06.1996 by which the appeal preferred by the respondent against the punishment order was rejected by the Inspector General, in which an endorsement has been made that the copy of the rejection order of the appeal is forwarded to G.C., C.R.P.F. Allahabad. Learned counsel for the respondent on the basis of the said documents submits that the impugned order was sent to the office of the C.R.P.F. at Allahabad for further action and communication to the respondentpetitioner and, therefore, the

part of cause of action has accrued within the territorial jurisdiction of this Court.

The learned counsel for the respondent in support of his submission has relied on the decision of this Court in the case of Phool Singh Chauhan vs. Chief of the Army Staff, 2008UPLBEC139.

We have considered the various submissions made by the learned counsel for the parties.

The Full Bench of this Court in the case of Rajendra Kumar Mishra (supra) has held that the writ petition is liable to be dismissed on the short ground that Allahabad High Court does not have jurisdiction in the case and only the Calcutta High Court or Dehli High Court had jurisdiction in this Case. In fact the petitioner Rajendra Kumar Mishra while serving in the army was posted at Kancharapara at Calcutta was chargesheeted and Court Martial proceedings were held by the Commanding Officer, Light Regiment at Calcutta in which he was found guilty of the charges and awarded certain punishments. The petitioner being the permanent resident of U.P. had filed the writ petition before the Allahabad High Court challenging the punishments. It was held that merely because the petitioner is resident of district Ballia (U.P.) the writ petition challenging Court Martial proceeding and sentence was not maintainable as no cause of action had accrued within the territorial jurisdiction of the Allahabad High Court.

In the case of Phool Singh Chauhan (supra) this Court has held that since the petitioner had sent an application to the Chief of the Army Staff from district Kanpur for taking him back in service which was rejected and communicated to the petitioner by letter dated 20.05.1986 at Kanpur (U.P.) the petitioner had cause of action to challenge the said decision of not taking him back in service before this Court. Thus so far as the prayer of the petitioner to quash the order dated 20.05.1986 refusing reinstatement of the petitioner in service it can be held that this Court has territorial jurisdiction since the representation was sent from Kanpur and refusing of the same was also communicated at Kanpur. The relevant paragraph is quoted below:

"12. In above view of the matter, it cannot be held that any part of cause of action arose within the territorial jurisdiction of this Court to challenge the punishment awarded by summary Court material dated 15th March, 1980. However, the submission much pressed by Counsel for the petitioner is that since the petitioner has sent an application to the Chief of the Army Staff from District Kanpur for taking him back in service, which was rejected and communicated to the petitioner vide letter dated 20th May, 1986 at Kanpur (U.P.), the petitioner had cause of action to challenge the said decision of not taking him back in service before this Court. In the counter affidavit filed by the respondents the allegations made in paragraphs 9 and 10 of the writ petition, i.e., representation of the petitioner to the Chief of the Army Staff for his reinstatement on 7th October, 1985, rejection of the said request and communication at Kanpur vide letter dated 20th May, 1986 has not been denied. Thus in so far as the prayer of

the petitioner to quash the order dated 20th May, 1986 refusing reinstatement of the petitioner in service, it can be held that this Court has territorial jurisdiction since the representation was sent from Kanpur and the refusal of the same was also communicated at Kanpur. In support of the petitioner's prayer to quash the order dated 20th May, 1986 same submission is pressed by the petitioner, i.e., the punishment of dismissal as well as imprisonment of six months was not permissible within the meaning of Army Act, 1950 and the said punishment being without jurisdiction, the petitioner was entitled to be reinstated."

We are of the considered opinion that the decision of this Court in the case of Phool Singh Chauhan vs. Chief of the Army Staff (supra) is not much of assistance to the respondent as the said case has no application in the facts of the present case because Respondent/petitioner has only challenged the punishment order of dismissal and the orders rejecting his appeal and revision, which have been admittedly passed out side the territorial jurisdiction of this Court.

Mere communication of these orders at the residential address of the respondent at district Bhadohi would not confer territorial jurisdiction to this Court. It has been held by the Full Bench of this Court in the case of Rajendra Kumar Mishra (supra) that mere residence of the petitioner within the territorial jurisdiction of this Court would not confer the jurisdiction to this Court to entertain the writ petition in which the order under challenge has been passed out side the State of U.P. The writ petition would be maintainable in the territorial jurisdiction of the High Court in which the impugned order was passed.

In view of the above, we are of the considered opinion that order under challenge passed by the learned Single Judge in writ petition no. 42351 of 1997 was passed without territorial jurisdiction and hence it is liable to be set aside.

We have also given our thoughtful consideration to the merit of the case and gone through the records. There is no finding of the learned Single Judge that the entire proceedings conducted by the appellants were in any manner illegal or violative of principle of natural justice or in violation of any rule or regulations made in this behalf. The respondent belong to a disciplined force and he had absented himself from duty for considerable period of long time without permission and due intimation to the department and without sending any medical certificate and proper application within time. He had not admitted himself in any of the C.R.P.F. Hospitals and, therefore, his plea that he had fallen ill due to which he could not join his duty raises doubts about his conduct. The departmental authorities had considered the various pleas raised by the respondent in appeal and revision which were filed against the punishment order and rejected.

In view of above, we are of the considered opinion that impugned order dated 12.12.2003 passed in writ petition no. 42351 of 1997 is liable to be set aside and it is hereby set aside. In the result the appeal is allowed. No order as to costs.