
(2008) 08 AHC CK 0252
In the Allahabad High Court
Case No : Special Appeal No. 622 (D) of 2008

Ex-Naik Ram Sharan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Citation : (2008) 08 AHC CK 0252

Hon'ble Judges : Ashok Bhushan, J and Arun Tandon, J

Final Decision : Dismissed

Judgement

1. Heard Shri Satyajit Mukerji, learned counsel for the appellant and Shri S.K. Rai for the respondents.

2. This Special Appeal has been filed against the judgment and order of the learned Single Judge dated 30.1.2008, by which order the writ petition filed by the petitionerappellant has been dismissed on the ground of lack of territorial jurisdiction of this Court.

3. Brief facts necessary for deciding the appeal are, the appellant was enrolled as Sepoy in the Indian Army on 21.12.1979. He was serving at West Bengal. Summary Court martial proceedings was held in West Bengal and vide order dated 19.11.1992, the appellant was dismissed from service. The appellant is said to have filed an appeal against the said order in the year 1993 which according to the appellant remained pending. He filed writ petition in this Court being Writ Petition No. 41012 of 1994. The said writ petition was disposed of with the observation that petitioner having availed the statutory remedy of appeal a direction was issued to decide the appeal within four weeks. In pursuance of the order of this Court dated 29.8.2006 the appeal filed by the petitioner was dismissed by the order dated 30.4.2007. Challenging the order dated 30.4.2007, writ petition was filed by the appellant which has been dismissed by the learned Single Judge on the ground that this Court has no territorial jurisdiction.

4. Shri Satyajit Mukerji, learned counsel for the appellant contends that the

appeal was sent from District Banda and appellate order was communicated to the counsel for the appellant at Allahabad which comes within the territorial jurisdiction of Allahabad, hence the writ petition was fully maintainable in this Court. He has also relied upon a judgment dated 14.9.2007 in Writ Petition No. 12411 of 1996, Phool Singh Chauhan v. Chief of Army Staff for the proposition that the part of cause of action having arisen within the State of U.P., the writ petition was fully maintainable. He has also placed reliance upon a judgment of Kerala High Court in P.P. Gopalari v. D.I.G. and another, 1985 (3) SLR 371.

5. Shri S.K. Rai, learned counsel for the respondents refuting the submissions of the learned counsel for the appellant contends that no part of cause of action arose within the territorial jurisdiction of this Court, hence the writ petition could not have been entertained. He submitted that the appellant was posted at Kolkata, West Bengal and the Summary Court Martial was held there in which the appellant participated and was ultimately dismissed from service. He submits that the appellate authority decided the appeal also at Kolkata and mere communication of the appellate order will not give a part of cause of action. He has placed reliance on a Division Bench judgment of this Court in Chabi Nath Raj v. Union of India and others, 1997 (1)UPLBEC 236.

6. We have considered the submissions and perused the record.

7. From the facts brought on record, it is clear that the appellant at the relevant time was posted in the State of West Bengal and the Summary Court martial was held at West Bengal in which he participated and the Summary Court martial order was communicated at West Bengal itself. Part of cause of action which is sought to be claimed in the State of U.P. is on the ground that the appeal was sent from District Banda and the appellate order has been communicated to the appellant at Allahabad which is within the territorial jurisdiction of this Court.

8. The Division Bench judgment relied upon by Shri S.K. Rai in Chabi Nath Rai (supra) fully supports his submission. In the said case also the appellate order was communicated where the petitioner was residing. The argument that part of cause of action arose at the place where appellate order was communicated was considered and repelled. Following was laid down in paragraphs 9, 10 and 11 of the said judgment:

"9. An order imposing penalty does not take effect unless it is communicated and the cause of action arises at a place where it is communicated but if an order is passed in appeal or on representation filed by delinquent or an accused and the order is confirmed does not give any fresh cause of action at a place where the order of appellate authority is communicated. It is an intimation of an order passed on the appeal or the representation made by the delinquent at a place where he is residing or where he indicates his address for communication of the order which maybe passed on appeal by the authority concerned. Every order which is communicated to a person at a particular place does not give cause of action where it is communicated. In State of Rajasthan and others v. M/s. Swaika

Properties and another, AIR 1985 SC 1289, wherein a notification issued by the State Government under Section 52 (2) of Rajasthan Urban Improvement Act was served at Calcutta on the petitioner of that case, it was held that the High Court at Calcutta had no jurisdiction to entertain the writ petition merely on the ground that the service of notice was effected upon him at Calcutta. The proceedings for acquisition had taken place at Jaipur and such proceedings were complete and merely serving the notice under Section 52 of the Act no cause of action did arise at Calcutta. In Vishnu Kumar Bhargava and others v. Metropolitan Magistrate, Bombay and others, 1986ALJ 1093, wherein a complaint was filed against the petitioner of that case in the Court of Metropolitan Magistrate, Bombay but its notice was alleged to be served at Allahabad, the Court held that the High Court at Allahabad had no jurisdiction to entertain the writ petition. The service of notice was not treated as integral part of cause of action inasmuch as for succeeding in the case, service of notice was not material.

"10. In case an appeal is dismissed and the order is communicated where the petitioner resides, the service of notice itself does not give any cause of action but it is only a communication of a decision on the appeal or representation made by him. In a case the order of termination or other penalty is imposed it is not effective unless it is communicated, but the same principle is not applicable when an appeal preferred by the petitioner himself, is decided.

"11. Learned counsel for the appellant next submitted that the doctrine of merger is applicable in the case when an order is passed in the appeal. It is the appellate order which is effective and the place where it is communicated should be treated as a place where cause of action arises. He placed reliance upon Keval Ram v. Smt. Ram Lubhai and others, AIR 1987 SC 1304, wherein observation was made that the decree of the trial Court merges in the appellate decree. This principle is well settled but the Court can examine in respect of a proceedings whether the order passed by the appellate authority or the revisional authority merges with the order passed by the subordinate authority and which order is effective in a particular circumstances passed by an authority."

9. Learned counsel for the appellant has placed much reliance on the judgment of Phool Singh Chauhan (supra). In the said case the Court observed that no part of cause of action arose within the territorial jurisdiction of the Court, insofar as punishment order was concerned, but in view of the fact that after dismissal the petitioner had sent an application to the Chief of the Army Staff from District Kanpur for taking him back into service which was rejected and communicated to the petitioner at Kanpur, a part of cause of action was held to have arisen. In the writ petition a prayer was also made for quashing the order dated 19.5.1986 refusing reinstatement. In view of the aforesaid, the case was considered on merits.

10. The facts of the present case are different. Here the cause of action is sought to be claimed on the ground that the appellate order was communicated within the territorial jurisdiction of this Court, Division Bench judgment of Chabi Nath

Rai (supra) fully covers the issue. In the case of P.P. Gopalan (supra) the facts were little different. Disciplinary proceedings took place under the Central Industrial Security Force Rules, 1969. The order of punishment was passed and the appeal against the dismissal order was also decided. The appellate order was served on the officer within the territorial jurisdiction of the Kerala High Court. In view of above, the Kerala High Court held that it had the competence to issue a writ. The judgment of Kerala High Court held that part of cause of action arose in the territorial area of Kerala High Court, due to service of appellate order it was further held that dismissal order had merged in the appellate order. The above order of Kerala High Court is opposite to the view taken by Division Bench of our High Court in ChabiNath Rai's case (supra). The view of learned Single Judge of Kerala High Court cannot be preferred when there is Division Bench judgment of our Court directly on the point.

11. In view of the aforesaid, we are of the view that no error has been committed by the learned Single Judge in dismissing the writ petition on the ground of lack of territorial jurisdiction. We however, make it clear that since the writ petition has not been entertained due to lack of territorial jurisdiction, it will be open for the writ petitioner/appellant to seek his redressal before the appropriate forum in accordance with law.

12. Subject to the observations as made above, the Special Appeal is dismissed.