

(1994) 04 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15470 of 1990

Gurnam Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Army Act, 1950 — Section 179

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

Citation : (1995) 109 PLR 381

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : R.S. Randhawa, for the Appellant; S.K. Pipat, Senior Standing Counsel and Vivek Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This petition under Article 226 of the Constitution has been filed by one Ex-Major Gurnam Singh challenging the legality and validity of the General Court Martial (GCM) proceedings whereby he was sentenced "to be cashiered" from service which sentence was later commuted to that of "dismissal from service".

2. The petitioner was commissioned in the India Army in March 1968. After serving in various capacities in different units, he was posted to 127 Inf Bn. (TA) ECO with effect from May, 1985. While he was posted at Dehradun in the State of Uttar Pradesh he is alleged to have committed the following two offences:-

Ist Charge under

Section 63 of the Army

Act (for short, "the Act")

An omission prejudicial to good order and military discipline in that he, at Dehradun, on 03 July 1986 while serving with 127 Inf Bn (TA) Ecological having

collected two official files i.e. No. 1209/Accts. (closed) and No. 1209/A/Current, from No. 4050505 Hav/Clk PC Bahuguna of the said Bn(TA) improperly failed to return the same to the custodian.

2nd Charge under

Section 47 of the Act:

Using criminal force to a person subject to the Act being his subordinate in position, in that he, at Dehradun, on 16 Aug 86 while serving with 127" Inf Bn (TA) ECO used criminal force on TA-40951 Late Maj AS Randhawa of the said Batallian on whom the petitioner threw a chair and gave blows on his face.

The petitioner was tried by the GCM which found him guilty of the above two charges. It is common case of the parties that the petitioner was at that time attached to the Jat Regiment Centre Bareilly in the State of Uttar Pradesh and the GCM was held at Meerut also in the State of Uttar Pradesh. The GCM sentenced the petitioner to be cashiered and this sentence was announced in open Court on 16.6.1987 which was subject to confirmation. The petitioner submitted a pre-confirmation petition to the confirming officer on July 4, 1987 against the order of the GCM. The Chief of Army Staff who is the confirming officer rejected the same on December 17, 1987 and this order was passed at New Delhi. However, while exercising his powers u/s 179 of the Act, the Chief of Army Staff commuted the sentence to that of "dismissal from service". The petitioner also submitted a post confirmation petition on September 6, 1988. In pursuance of the Directions issued by this Court, this petition was placed before the Central Government which, on a consideration of the entire matter rejected the same, as according to it, the petition lacked substance. This order was passed at New Delhi on September 18, 1990. After dismissal from service the petitioner came to settle down at Patiala in the State of Punjab. Thereafter the Ministry of Defence, Government of India, New Delhi as per its notice dated October 21, 1988 (Annexure P5 with the writ petition) called upon the petitioner to show cause as to how he was entitled to pension of both the charges and was sentenced to be cashiered by the GCM which sentence was confirmed but commuted to that of dismissal from service. It was at this stage that the present petition was filed challenging not only the show cause notice but also the GCM proceedings on a number of grounds alleging violation of a various mandatory provisions of the Act. Vires of Section 63 of the Act also been challenged.

3. It was strenuously urged by Mr. R.S. Randhawa, Advocate for the petitioner that the second charge could not have been framed as Major A.S. Randhawa against whom criminal force was allegedly used was not subordinate to the petitioner either in rank or in position and, therefore, the petitioner could not be said to have committed any offence u/s 47 of the Act. It was also contended that the first charge was vague and that the GCM that tried the petitioner was not properly convened and the mandatory provisions of Section 109 of the Act and Rule 37 of the Army Rules, 1954 were flagrantly violated. Besides raising some

other objections, the notice issued to the petitioner calling upon him to show cause as to how he was entitled to the pensionary benefits has also been challenged on the ground that the punishment of forfeiture of service for the purpose of pension could be inflicted by the GCM and the GCM not having awarded any such punishment it could not be imposed by the Central Government.

4. In the written statement filed on behalf of the Union of India, a preliminary objection has been raised challenging the territorial jurisdiction of this Court besides controverting the other allegations. It is submitted that the offences were committed by the petitioner at Dehradun when he was attached to the Jat Regiment Centre, Bareilly and the GCM was held at Meerut. The sentence was also pronounced at Meerut which was subject to confirmation. The pre-confirmation petition was rejected by the Chief Army Staff at New Delhi and the post-confirmation petition was also rejected by the Central Government at Delhi. According to the respondent, no part of the cause of action arose within the jurisdiction of this Court and, therefore, the petition was barred under Article 226(2) of the Constitution.

5. I have heard counsel for the parties at length. Since I am upholding the preliminary objection which was strenuously pressed at the time of hearing, it is not necessary for me to deal with the other contentions raised by the petitioner's counsel. It is not disputed on behalf of the petitioner that he was posted at Dehradun when the alleged incidents took place and that he was tried by a GCM the proceedings of which were held at Meerut. The sentence was pronounced in open Court which was subject to confirmation and the petitioner was convicted and awarded sentence of "cashiering" which was subsequently commuted by the Chief of Army Staff to that of "dismissal from service". Admittedly, the pre-confirmation petition and the post-confirmation petition were rejected by the Chief of Army Staff and the Central Government respectively and those orders were passed at New Delhi. Mr. Randhawa learned counsel for the petitioner fairly conceded that till the dismissal of the post-confirmation petition by the Government of India no part of the cause of action had arisen within the territorial jurisdiction of this Court and if the matter was to rest there, the petitioner could not challenge his dismissal or the GCM proceedings in this Court. He, however, submitted that after his dismissal from service the petitioner came to be settled at Patiala where he received the impugned note dated October 21, 1988 from the Ministry of Defence, Government of India calling upon him to show cause as to how he was entitled to the pensionary benefits. According to the learned counsel, the receipt of this notice at Patiala gives the petitioner a cause of action to challenge the same in this Court. He further submits that since a part of the cause of action, namely, the receipt of notice has arisen within the territorial jurisdiction of this Court, it is open to the petitioner to challenge the GCM proceedings as well which, according to the petitioner, were held in violation of the mandatory provisions of the Act. On the other hand, Mr. S.K. Pipat, learned counsel for the Union of India Vehemently contended that mere receipt

of a notice at Patiala does not give any cause of action and that this Court had no territorial jurisdiction to entertain the petition.

6. On the a consideration of the contentions advanced before, me, the question that arises for consideration is whether a mere receipt of the impugned notice by the petitioner at Patiala gives him a cause of action to file the present petition in this Court and whether he is entitled to challenge his conviction, order of dismissal and GCM proceedings in that petition.

7. After giving my thoughtful consideration to the rival contentions of the parties, I am of the view that mere service of notice at Patiala where the petitioner chose to settle in life after his dismissal from service does not give him any cause of action to challenge his order of dismissal as also the GCM proceedings in this Court and that the present petition is barred under Article 226(2) of the Constitution. The matter is not res integra. Their Lordships of the Supreme Court had an occasion to deal with the question of territorial jurisdiction under Article 226 of the Constitution in *State of Rajasthan and Others Vs. Swaika Properties and Another*, . In that case, the State of Rajasthan proposed to acquire land for a public purpose under the provisions of Rajasthan Urban Improvement Act, 1959. Notice of acquisition was served on the owner of land M/s. Swaika Properties at their registered office at Calcutta. A petition under Article 226 of the Constitution was filed in the Calcutta High Court challenging the validity of the notification acquiring the land in Rajasthan. When a learned single Judge of the Calcutta High Court issued notice to the respondents therein and issued interim directions, the matter was taken to the Supreme Court and it was held that the mere service of notice u/s 52(2) of the Rajasthan Urban Improvement Act on the owner of a land situated in the State of Rajasthan intimating the State Government's proposal to acquire that land does not constitute an integral part of the cause of action sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under Article 226 of the Constitution challenging the validity of the notification acquiring the land. Relying on this judgment a Division Bench of the Allahabad High Court in *Daya Shanker Bhardwaj Vs. Chief of the Air Staff, New Delhi and Others*, has taken a similar view. The petitioner therein was a junior warrant officer in the Air Force. While posted at Madras, he was superseded. He filed a petition in the Allahabad High Court for a direction to the respondents therein to decide his representation and grant him status of warrant officer. He was never posted in the state of Uttar Pradesh. R.M. Sahai, J. (now an Hon'ble Judge of the Supreme Court) while speaking for the Court held that no cause of action arose in Uttar Pradesh and observed as under :-

"A person residing any where in the country being aggrieved by an order of government Central or State or authority or person may have a right of action at law but it can be enforced or the jurisdiction under Article 226 can be invoked of that High Court only within whose territorial limits the cause of action wholly or in part arises. The cause of action arises by action of the government or authority and not by residence of the person aggrieved.

Following these judgments, a Division Bench of this Court in *M/s Eider Telecom Ltd. v. Union of India and Ors.* 1993 (1) C.L.J. 762 has taken a similar view. In that case, the Department of Telecommunication, New Delhi invited tender proposals for the grant of Franchise Licences for providing. Radio Paging services for 27 cities in India including Chandigarh. By the time the applicants were shortlisted everything was expected to be done at New Delhi. Delhi office had issued the advertisement for submitting tenders and they were to be accepted at New Delhi. They were opened there and evaluated. The petitioner therein filed its tender and posted the same from Chandigarh. When it did not find its name in the successful applicants it challenged the proceedings in this Court under Article 226 of the Constitution. The writ petition was dismissed holding that merely because the tender was sent by post from Chandigarh did not mean that any cause of action had accrued here to enable the petitioner to file a petition in this Court.

8. Respectfully following the aforementioned judgments, I hold that merely because the impugned notice was received by the petitioner at Patiala where he had settled after his dismissal from service does not constitute any part of the cause of action which could be said to have arisen within the territorial jurisdiction of this Court so as to entitle the petitioner to file the present petition. If the contention of the petitioner were to be accepted, the consequence would be that territorial jurisdiction of the Court would depend on just the residence of the petitioner wherever it be in the country. This could not possibly be the intention of law. As no cause of action had accrued within the jurisdiction of this Court, I have no option but to dismiss the petition. It will, however, be open to the petitioner to approach an appropriate Court for such relief as may be available to him under the law. There is no order as to Costs.