

**(2019) 11 P&H CK 0167**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Miscellaneous No. 11628 (Civil Writ Petition) Of 2018 In Civil Writ Petition No. 18495 Of 2017

Harbhajan Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

---

**Date of Decision :** 13-11-2019

**Acts Referred:**

Limitation Act, 1963 — Section 14

Constitution Of India, 1950 — Article 226, 226(2), 227

**Citation :** (2019) 11 P&H CK 0167

**Hon'ble Judges :** G.S. Sandhawalia, J

**Bench :** Single Bench

**Advocate :** Pawan Kumar Sharma, Arun Gosain

**Final Decision :** Dismissed

---

**Judgement**

G.S. Sandhawalia, J

The petitioner has filed the petition under Articles 226/227 of the Constitution of India seeking directions on the basis of notification dated 11.8.2010 (Annexure P/3) to promote him to the post of Additional Director General with effect from 10.12.2014. The ground taken is that he had completed 30 years of service and had three years' service as Inspector General and that his case had been withheld with malafide intention by the respondents. He had become eligible in the year 2016, therefore, he in alternative was entitled atleast for the local rank of Additional Director General.

The respondents have filed an application for dismissal of the writ petition for want of territorial jurisdiction of this Court. It is their case that all the cause of action and proceedings adverse to the petitioner took place out side the boundaries of this Court. None of the cause of actions neither wholly or in part arose in the territorial jurisdiction of this Court. Resultantly, summarily dismissal of the writ petition for lack of territorial jurisdiction is pleaded.

In the reply to the application, reliance has been placed on several judgments that this Court as such has jurisdiction and the writ Court could invoke its jurisdiction under Article 226 of the Constitution of India irrespective of the fact as to whether the person or authority to whom the writ is sought to be issued is located within or outside the territorial limits of the High Court.

Keeping in view the above this Court has chosen to embark upon the issue of territorial jurisdiction as to whether any cause of action arose within territorial jurisdiction of this Court.

A perusal of the petition would go on to show that the petitioner joined as Assistant Coy Commander on 2.6.1980 and claimed that he had completed 36 years 4 months services in the Indo Tibetan Border Police (ITBP). He had been awarded award of 'Padma Shri' during the year 2011 and other distinctions also. He had been promoted as Inspector General on 10.12.2011 and become eligible to the promotional post of Additional DG after having three years of service in the promoted post.

In the writ petition there is no reference as such of petitioner's posting within the territorial jurisdiction of this Court at any point of time. It is his case that he had made representation dated 7.7.2015 (Annexure P/5). A perusal of same would go on to show that that it is addressed to the Director General of ITBP, New Delhi and the petitioner had been posted as Inspector General at New Delhi. Similarly representations have also been addressed to other higher officials which would go on to show that no where the petitioner as such had been posted within the territorial jurisdiction of this Court. All the representations were during his posting at New Delhi. It seems that after his retirement on 31.9.2016, a legal notice dated 13.2.2017 (Annexure P/14) had been served whereby he was shown as resident of House No.1188, Urban Estate, Phase-II, Patiala(Pb) which address is also given in the Memo of Parties.

In such circumstances in the absence of any pleading as such that any cause of action arose within the territorial jurisdiction of this Court, this Court is of the opinion that objection raised by the respondents is well founded. Reliance can be placed upon the judgment of three Judges Bench of the Apex Court in M/s Kusum Ingots and Alloys Ltd. Vs. Union of India and another AIR 2004 Supreme Court 2321 wherein the Apex Court had discussed issuance of notice for the repayment of loan which was obtained from Bhopal. The writ petition had been preferred in Delhi High Court which was dismissed on the ground of lack of jurisdiction. Accordingly, it was held that the Court must have requisite territorial jurisdiction and some part of cause of action should arise in the jurisdiction of the High Court. Even if a small part of cause of action arose within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determining factor to exercise jurisdiction. The decision of dismissal of the writ petition by the Delhi High Court was accordingly upheld and it has held that the Court may refuse to exercise its discretionary jurisdiction by invoking doctrine of forum conveniens.

Similar issue arose in *Eastern Coalfields Ltd. and others Vs. Kalyan Banerjee* AIR 2008 SC (Supp) 1553 where services of employee who served in the Jharkhand State were dispensed with. The Calcutta High Court was approached on the ground that the head office as such of the company was at Calcutta. The Division Bench held that it had no jurisdiction. The review petition was filed thereafter which was allowed and the same was the subject matter of consideration by the Apex Court. Resultantly, it was held that only because of the head office of the appellant company was situated in the State of West Bengal would not confer any jurisdiction upon the Calcutta High Court.

Counsel for the petitioner though has relied upon three Judges Bench of the Apex Court in *Dinesh Chandra Gahtori Vs. Chief of Army Staff* and another 2001(9) SCC 525. A perusal of the said judgment would go on to show that it was a case of summary court-martial proceedings conducted in the State of Punjab and the serviceman had been dismissed from service. The High Court of Allahabad had declined to interfere on the ground of lack of jurisdiction. Resultantly, it was held that the Chief of Army Staff can be sued anywhere in India since the fact shows that the communication was sent to the wife informing her that the appellant had been tried by the summary court-martial and therefore, the said judgment would not be helpful to the petitioner. In the present case neither it has been pleaded that there was any cause of action which arose in the territorial jurisdiction of this Court nor any detail of petitioner's posting in the territorial jurisdiction of this Court have been given. It is obvious after retirement on 30.9.2016 a legal notice dated 13.2.2017 (Annexure P/14) was sent claiming relief of promotion on account of vacancy. Nowhere it has been stated that any cause of action arose in the territorial jurisdiction of this Court. Merely, because the petitioner is now residing within the territorial jurisdiction of this Court would not confer jurisdiction upon this Court.

Reliance can be placed upon the judgment of the Apex Court in *Nawal Kishor Sharma Vs. Union of India and others* AIR 2014 Supreme Court 3607. In the said case, the High Court of Patna had declined to exercise its jurisdiction on the ground that the service was at Bombay and the appellant had settled at his native place Gaya, Bihar. The appellant had been declared unfit for sea service and there was communication as such regarding his disability compensation which had been communicated to him. Resultantly, it has held that fraction of cause of action arose within the jurisdiction of the Patna High Court where the petitioner received a letter of refusal disentitling him from disability compensation. The appeal was allowed and the matter was remanded for deciding on merits. However, on question of law as such it was held that keeping in view the provisions of Article 226 of the Constitution a satisfaction is to be recorded that a part of cause of action arose within the jurisdiction of the Court in order to maintain a writ petition which in the present case there seems to be none. Relevant portion reads as under:-

17. In *Om Prakash Srivastava vs. Union of India and Another* (2006) 6 SCC 207,

answering a similar question this Court observed that on a plain reading of Clause(2) of Article 226 it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territory. In para 7 this Court observed:-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

18. In the case of Rajendran Chingaravelu vs. R.K. Mishra, Additional Commissioner of Income Tax and Others, (2010) 1 SCC 457, this Court while considering the scope of Article 226(2) of the Constitution, particularly the cause of action in maintaining a writ petition, held as under:

"9. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

xxxxxx

11. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at the airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher-ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient,

passenger-friendly and courteous. Secondly, he wants the Department/officers concerned to acknowledge that he was unnecessarily harassed."

19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

Resultantly, keeping in view the above discussion, the Civil Misc. Application filed by the Union of India has substance and the same is accepted. This Court comes to the conclusion that no cause of action has arisen within the territorial jurisdiction of this Court. Therefore, the present petition is not maintainable on account of lack of territorial jurisdiction.

Accordingly, the present petition is dismissed being not maintainable. The petitioner is left free to pursue his remedies in a Court of competent jurisdiction, outside the territories, over which, this Court exercises jurisdiction under Article 226 of the Constitution of India, under which, the present petition was presented. Since the petitioner has pursued remedy bonafide in wrong forum he may claim protection of Section 14 of the Limitation Act, 1963 for the period spent before this Court. Nothing said in this order will be taken as an expression of opinion on the merits of the case as reference to facts was necessitated to resolve the preliminary objection raised by the respondents.