

(2012) 01 DEL CK 0347
In the Delhi High Court
Case No : WP (C) No. 57 of 2012

Havildar Venkatagireppa DN		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 4 AD 520 : (2012) 186 DLT 757 : (2012) 2 SLJ 201

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : Major K. Ramesh, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought a writ of certiorari to set aside the order of the Armed Forces Tribunal dated 19th December, 2011 wherein the Tribunal had held that the jurisdiction in the matter would be of the Chandigarh bench of the Armed Forces Tribunal as the cause of action had arisen to the petitioner in Leh. While sending the case to the Chandigarh bench of the Armed Forces Tribunal, the Tribunal also granted one week's time to the respondents to file the reply.

2. The petitioner had filed the petition before the Armed Forces Tribunal, Principal Bench, New Delhi being O.A No.321/2011 seeking to quash the communication dated 13th May, 2011 rejecting the statutory complaint dated 22nd September, 2010 in respect of the adverse ACR for the year 2008-2009.

3. The petitioner had contended that he had filed an original petition before the Armed Forces Tribunal, Principal Bench, New Delhi in which notice was issued and the matter was taken up by the Principal Bench on several occasions. According to the petitioner, the Tribunal, however, took a complete volte face and directed that since the petitioner was posted at Leh the matter should be transferred to the Armed Forces Tribunal, Regional Bench, Chandigarh by its

order dated 19th December, 2011.

4. The petitioner has challenged the order of the Tribunal sending the petition of the petitioner to the Chandigarh Bench of the Tribunal on the ground that since the notice had already been issued by the Principal Bench, it could not have sent the petition to the Chandigarh Bench of the Armed Forces Tribunal. The petitioner also relied on a decision of the Delhi High Court in the matter of Colonel Sarat Chandra Mishra v. Union of India & Ors., W.P.(C) No.5062/2011 decided on 20th July, 2011 holding that the situs of the office where the statutory complaints are decided would confer jurisdiction on the Court, within the territorial jurisdiction whereof the said Authority sits and in the circumstances the original application of Colonel Sarat had been restored being O.A No.254/2011 and the High Court had set aside the order of the Tribunal which had held that the Tribunal has no jurisdiction to entertain the petition for want of territorial jurisdiction. In the instant case the petitioner had challenged the order pertaining to his confidential record and the disposal of his statutory petition.

5. The petitioner has also referred to Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 to contend that the Principal Bench of the Armed Forces Tribunal at Delhi will have jurisdiction.

6. The petitioner categorically asserted that since the petitioner had filed a statutory petition against the adverse ACRs of the years 2008 and 2009 and that the Chief of Army Staff by letter dated 13th May, 2011 had rejected his statutory petition, therefore, the Principal Bench, Armed Forces Tribunal shall have jurisdiction. The petitioner especially contended that the petitioner and his counsel had the impression that had the respondent filed the reply, the petition would have been disposed of on 19th December, 2011 itself. According to the petitioner, the decision of the High Court in the case of Colonel Sarat Chandra Mishra (supra) was in rem and not in personam.

7. The learned counsel for the respondent, Dr. Ashwani Bhardwaj who appears on advance notice has relied on the judgment of the Five Judges Bench of this Court in the matter of Sterling Agro Industries Ltd v. Union of India & Ors, W.P.(C) No. 6570/2010 decided on 1st August, 2011. The learned counsel had contended that in the instant case it was categorically held that the decision in Ambica Industries Vs. Commissioner of Central Excise, and New India Assurance Co. Ltd. Vs. Union of India (UOI) and Others, are not correct, wherein it was held that the place where the appellate authority is located will be the incident of forum conveniens. In Sterling Agro Industries Ltd (supra) in paragraph 33, this Court's Bench of five judges has held as under:-

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs

of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra). (g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

8. This is not disputed by the learned counsel for the petitioner that the ACRs sought by the petitioner for the years 2008 and 2009 were neither written by the reporting officer nor the reviewing officer within the jurisdiction of the Principal Bench of the Armed Forces Tribunal. Under Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 the application can ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or was last posted or attached or where the cause of action wholly or in part has arisen. Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 is as under:-

6. Place of filing application: (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction-

(i) The applicant is posted for the time being, or was last posted or attached; or

(ii) Where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders u/s 14 or section 15 of the Act, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service on account of his retirement, dismissal, discharge, cashiering, release, removal, resignation 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.

9. This is not disputed that even relying under Rule 6, neither the applicant is posted for the time being within the jurisdiction of the Principal Bench of the Armed Forces Tribunal nor was he last posted or attached to a place within the jurisdiction of the said Tribunal. The learned counsel for the petitioner made a vague attempt to contend that the reporting and reviewing officers for the ACRs of 2008 and 2009 are placed throughout the country. The learned counsel has, however, failed to disclose any such facts in the writ petition or in the original application filed before the Tribunal, which would show that cause of action pertaining to the reporting or reviewing officer with regards to the ACRs of the petitioner for 2008 and 2009 had arisen within the jurisdiction of the Principal Bench of the Tribunal.

10. This is not disputed that the petitioner was posted at Leh and he has not ceased to be in service on account of his retirement, dismissal, discharge, cashiering, release, removal, resignation or termination of his service. The petitioner was not ordinarily residing in Delhi at the time of filing of the petition within the jurisdiction of the Principal Bench of the Armed Forces Tribunal. Thus none of the ingredients as detailed in Rule 6 have been satisfied and therefore, the Armed Forces Tribunal, Principal Bench does not have jurisdiction to adjudicate the present matter.

11. The learned counsel has further contended that as part of the cause of action under Rule 6 will arise within the jurisdiction of the Principal Bench, Armed Forces Tribunal as the statutory complaint was filed by the petitioner to the Chief of Army Staff at Delhi and the same was rejected there. However, as it has been held in *Sterling Agro Industries Ltd.* (supra) that the place where the appellate authority decides the appeal or the petition of an employee does not form a factor to ascertain the forum conveniens. This plea of the petitioner therefore, cannot be accepted.

12. The decision of the Division Bench of this Court in *Colonel Sarat Chandra Mishra* (supra) was given on 20th July, 2011 whereas the decision of the five Judges Bench in the matter of *Sterling Agro Industries Ltd.* (supra) was given thereafter on 1st August, 2011. Consequently, no reliance can be placed on the decision of *Colonel Sarat Chandra Mishra* (supra) as it has been superseded by the ratio laid down in the matter of *Sterling Agro Industries Ltd* (supra).

13. In the totality of the facts and circumstances and considering the principle of forum conveniens which has been upheld by this Court in M/s. Sterling Agro Industries Ltd (supra) the Principal Bench of the Armed Forces Tribunal was not the appropriate forum for the adjudication of the disputes of the petitioner pertaining to his ACRs for the period of 2008 and 2009. In the circumstances, if the Tribunal has directed the petition of the petitioner to be sent to the Chandigarh Bench of the Armed Forces Tribunal, the order of the Tribunal cannot be held to be suffering from any illegality, irregularity or jurisdictional error nor has any such ground been made out by the learned counsel for the petitioner.

14. For the foregoing reasons, there are no grounds to interfere with the order of the Tribunal sending the original petition of the petitioner to its Chandigarh bench and directing the parties to appear there. The writ petition is without any merit and it is, therefore, dismissed.