

(2011) 08 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 22697 of 2010

Kashmir Singh Dhillon

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Army Act, 1950 — Section 80
Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226(2)

Citation : (2011) 164 PLR 403

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioner seeks quashing of order dated 13.8.2010 whereby his representation for setting-aside the punishment awarded to him on 14.12.1996 has been rejected. As per the petitioner, this has been done in an arbitrary manner.

2. Having been enrolled as a recruit Clerk, the petitioner was promoted as Naik and then to the rank of Paid Acting Havildar on 1.9.1996. The petitioner states that his promotion was delayed because of no fault on his part and accordingly he represented to officiating Senior Record Officer of the Regimental Centre for grant of anti-date seniority. As per the petitioner, he was threatened to withdraw this representation, to which he did not agree. The petitioner states that his harassment started thereafter. On 14.12.1996, the petitioner was summarily tried u/s 80 of the Army Act and was awarded punishment of depriving him of his Paid Acting Rank of Havildar. The allegation made against the petitioner was that he had visited the market without out pass.

3. The summary trial of the petitioner was held at Ramgarh in Bihar State, which he did not challenge. On 29.9.1997, the petitioner was posted to 15 Punjab Regiment. His C.O. took up the case with the Record Office, but to no avail. Still,

the petitioner did not take any action to challenge this punishment. On 14.2.2002, the petitioner was posted to head quarter 11 Corps under the territorial jurisdiction of this Court. Still, nothing happened. In the year 2010, while being posted in Public Relation Unit, the petitioner again sent his case to the Colonel of the Punjab Regiment, who referred the same to his Record Office. His request was rejected on 13.8.2010 and he has, therefore, filed this petition before this Court.

4. The petitioner has challenged the punishment awarded to him in the year 1996, which was awarded at Ramgarh, outside the territorial jurisdiction of this Court. Merely because he has been conveyed an order rejecting his representation in the year 2010, would not entitle the petitioner to invoke the jurisdiction of this Court as no cause of action or part of cause of action apparently has arisen under the territorial jurisdiction of this Court. There is also unexplained delay on the part of the petitioner to challenge the punishment. The representations filed by the petitioner are not any statutory representations and are mere conveying of the order passed by Record Office, which is located at Ramgarh would not constitute any part of cause of action for this Court to exercise jurisdiction. Reference in this regard can be made to the judgment of this Court in *Gurdial Singh v. Food Corporation of India and others*,¹ ILR 2006 (2) P&H 59, where the Division Bench of this Court has held that mere service of order even if it be so, can not constitute an integral part of cause of action. The Court has further viewed that the cause of action arises by the action of the government or authority and not by the residence of the person aggrieved and that receipt of the communication itself does not constitute a fact in the bundle of facts constituting the cause of action. At best, receipt of order or communication only gives a party a right of action based on cause of action arising out of action complained of.

5. While defining cause of action, this Court in *Gurdial Singh's* case (*supra*) has observed as under:-

Though not defined in the Constitution, yet we need not devote ourselves much to find the meaning of "cause of action", as by now, it is well understood by various authoritative pronouncements. The words "cause of action, wholly or in part arises" apparently have been lifted from Section 20 of the Code of Civil Procedure. While referring to a judgment in *Read v. Brown*,² (1989) 22 Q.B.D. 128 the Supreme Court in a case *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, , held that "cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. "Even in the context of Article 226(2) of the Constitution, the Supreme Court had adopted the same interpretation to the expression "cause of action" wholly or in part arises". In this regard, reference may also be made to *State of Rajasthan and Others Vs. Swaika Properties and Another*, and *Oil and Natural*

Gas Commission Vs. Utpal Kumar Basu and Others, . In the case of State of Rajasthan and another (supra), the Supreme Court relied upon the definition of "cause of action" as given in Mulla's Code of Civil Procedure, which says that "the "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In Oil and Natural Gas Commission (supra) the Supreme Court further ruled that "..... the cause of action has no relation what ever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the plaintiff It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

6. In view of the above, it is clear that no cause of action has arisen under the territorial jurisdiction of this Court. The writ petition is, therefore, dismissed for want of territorial jurisdiction.