
(2013) 10 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18946 of 2005

Lt. Col. Sultan Singh Ralhan

APPELLANT

Vs

Commandant

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0081

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Judgement

Rajiv Narain Raina, J.—The petitioner has impugned three adverse orders passed against him which have been placed on record which are

chronologically Annexures P-14, P-7 and P-12 dated 26.3.1994, 14.9.1994 and 15.7.2005 respectively. The petitioner is a Captain in the Indian

Army. He was awarded the punishment of reprimand vide order dated 14.9.1994 passed at Lucknow for lack of exercise of proper supervision of

the loading, lashing/security packing of a consignment of refined mustard oil in vehicle bearing registration No. UHG-9920 belonging to 44 COY

ASC. The consignment was dispatched to Supply Depot, ASC Fatehgarh, Punjab. As a result of his omission to exercise proper supervision, the

Government suffered a loss of Rs. 20614.43. The Commander-in-Chief, Central Command confirmed the court of enquiry proceedings for the

loss of 623 kgs. of refined mustard oil amounting to Rs. 20614.43 in respect of Supply Depot, ASC, Fatehgarh, Punjab and ordered recovery of

the amount vide his order dated 26.3.1994. This order was also passed at Lucknow (Uttar Pradesh). Against that order, the petitioner filed a

statutory complaint under the Army Act, 1950 to the Government of India in the

Ministry of Defence, New Delhi which vide order dated

15.7.2005 considered the materials on record of the Court of enquiry proceedings of the charge framed under Army Rule 22 and rejected the

case expressing the view that no injustice has been caused to the complainant/appellant in the case. Thus, the statutory complaint dated 13.8.2000

was rejected at a stage when the petitioner had been promoted as Lieutenant Colonel. This order was passed at New Delhi against a cause of

action which had arisen in Lucknow.

2. On notice of motion having been issued, the respondent army have resisted and filed the written statement contesting the case, in which, inter

alia, an objection has been taken as to the maintainability of the writ petition before this Court for lack of territorial jurisdiction.

3. Ms. Deepali Puri learned counsel appearing for the respondent army and Central Government submits that the court of enquiry which led to the

award of punishment was held outside the jurisdiction of this Court in Lucknow where the misconduct was committed. The incident is of

25.6.1993. Merely because, the consignment reached Fatehgarh within the territorial jurisdiction of this Court on 26.6.1993 and deficiency in the

weight of refined mustard oil was found at Supply Depot, Fatehgarh would not create territorial jurisdiction for this Court to intervene and hear the

case on merits.

4. The learned counsel for the petitioner submits that this Court has sufficient territorial jurisdiction to entertain the writ petition since a part of the

cause of action has arisen within the territorial jurisdiction of this Court. It is submitted that against the illegal award of reprimand and non-disposal

of the statutory complaint by the 5th respondent, the petitioner had filed C.W.P. No. 12086 of 2004 which was disposed of by the division bench

of this Court by an ex-parte order dated 12.8.2004 which reads as follows:

Present: Mr. S.S. Pathania, Advocate for the petitioner.

We have heard learned counsel for the petitioner.

One of the grievances of the petitioner is that his Statutory Complaint was not being decided. If that be so, we dispose of this petition with a

direction to the respondents to decide the Statutory Complaint as per law within a period of six months from the date that a certified copy of this

order is received by them, In case the claim of the petitioner is to be denied, reasons therefore should be given in the order itself.

5. Mr. Pathania learned counsel appearing for the petitioner submits that when this Court entertained the writ petition and directed that the

statutory complaint be decided as per law within the period of 6 months from the date the certified copy of this order is received by the

respondents, then the path of maintainability of the petition was opened for the petitioner to approach this Court once again to get the final adverse

order tested on judicial review. Still further, he submits that when the order dated 12.8.2004 passed in C.W.P. No. 12086 of 2004 was not

decided within the period directed, the petitioner again approached this Court through C.W.P. No. 5059 of 2005 which was disposed of on

29.3.2005 indicating that the remedy under the Contempt of Courts Act is available to the petitioner for noncompliance of the directive issued by

this Court for a time bound decision. The petitioner then filed C.O.C.P. No. 416 of 2005 on 4-4-2005, in response to which, the order dated

2.9.2005 (P-12) was produced through a short reply bringing to the notice of this Court that the statutory complaint had been rejected. This is

how the present writ petition was filed in 2005 assailing the Court of enquiry proceedings on merits and award of punishment of reprimand and

recovery of alleged loss sustained by the army in transportation loss.

6. It may be noted that both C.W.Ps. No. 12086 of 2004 and 5059 of 2005 were disposed of ex-parte without hearing the respondent army. It

was only in the contempt proceedings that the order passed on the statutory complaint was produced resulting in closure of the contempt petition.

7. The question which arises in this case is whether after entertaining two writ petitions and on pain of contempt proceedings and tendering of

unconditional apology for the delay in passing the order beyond the specific period would amount to conferring territorial jurisdiction on this Court

to decide the case on merits.

8. Learned counsel for the petitioner submits, on the strength of Article 226(2) of the Constitution of India that the power conferred on the High

Court under Article 226(1) is to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court

exercising jurisdiction in relation to the territories within which the cause of

action, wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. It is submitted that if the cause of action did not wholly arise within the territory, to which the powers of this Court extend, at least a part of the cause of action can be said to have arisen either at Supply Depot, Fatehgarh or at New Delhi where the statutory complaint was decided and rejected and this Court exercises jurisdiction over the orders passed at New Delhi in relation to its territory which adversely affect an aggrieved person within the jurisdiction of this Court. At the time of filing the writ petition, the petitioner is stated to have been posted in Jalandhar, Punjab. The respondents rely on a division bench decision of this Court in *Gurdial Singh v. Food Corporation of India*, 2006 (3) S.C.T. 97 : 2006 (3) RSJ 349 to submit that the cause of action arises by the action of the Government or authority and not by the residence of the person aggrieved. The receipt of a communication itself does not constitute a fact in the bundle of facts constituting cause of action if proved would entitle the petitioner to a decree.

There is a well accepted distinction between "right of action" and "cause of action". The right of action may have accrued in Punjab but the cause of action remained static at Lucknow. If the statutory complaint was decided at the seat of the Central Government at New Delhi, it was in relation not to right of action but to a cause of action accruing at Lucknow where the court of enquiry proceedings were initiated, held and punishment order of reprimand awarded. Neither Article 226 nor any other provision of the Constitution defines the meaning of "cause of action" and, therefore, the principles laid down in S. 20 of the Code of Civil Procedure, 1908 as evolved by different courts are helpful in determining the meaning. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, , the Supreme Court ruled that ""the cause of action has no relation, whatever, to the defence which may be set up by the defendant, nor does it dependent 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"". In *Baldev Singh Vs. Union of India (UOI) and Others*, , this Court held that it would have no

jurisdiction to entertain a petition in respect of summary Court Martial proceedings held at Pune and the sentence imposed upon the petitioner by the respondents when the Unit of the petitioner was stationed at Pune.

9. Mr. Pathania relies on a decision of the Single Bench of the High Court of Gauhati, Shillong Bench in Lt Col. P. Sreekumar v. Union of India

and others, Military LJ 2000 Gau 58, to contend that the cause of action may be one or several and it may be one or in several parts, a part which

may arise at one time and at one place and the remaining part of parts of it may arise at another time at a different place. In such a situation, the

plaintiff has a right to choose any of the places amongst the places wherever any part of the cause of action had arisen. This case related to

recording of adverse A.C.Rs. leading to adverse action in the matter of promotion at the hands of the Selection Board. Learned counsel relies on

the decision of the Supreme Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, , to contend that the writs can run beyond

the territorial jurisdiction of the High Court if the cause of action arises within its territorial jurisdiction. This was a case decided in criminal

jurisdiction where the prayer was for quashing of an F.I.R. filed in another State. The F.I.R. was filed in Shillong for the series of causes of action

arising in Bombay where part investigation was done. It was found that a part of the cause of action had arisen in Bombay with reference to the

commission of a criminal offence. Learned counsel relies on observations made in para. 7, 8 and 33 of the report which read as follows: -

7. The object of the amendment by inserting clause (2) in the Article was to supersede the decision of the Supreme Court in Election Commission,

India Vs. Saka Venkata Subba Rao and, and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred

on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which

the cause of action, wholly or in part, arises"" and it is no matter that the seat of the authority concerned is outside the territorial limits of the

jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High

Courts.

8. ""Cause of action"" is a phenomenon well understood in legal parlance.

Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words ""cause of action wholly or in part arises"" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts. As per that section the suit could be instituted in a Court within the legal limits of whose jurisdiction the ""cause of action wholly or in part arises"". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean the bundle of facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

33. From the provision in clause (2) of Art. 225 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on

whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

10. On merits of the case, the petitioner relies on a division bench decision of the Delhi High Court in Ex. Rect. Lachhman Vs. Union of India

(UOI) and Others, . But the examination of the case on merits would depend on the answer to the preliminary objection on the maintainability of the petition.

11. The few uncontroverted facts briefly stated are: The petitioner filed this petition while serving the Army posted at Jalandhar Cantt. in Ex. 44

Coy. ASC. The specific prayer in the writ was for quashing the orders passed either at Lucknow and at New Delhi. Both the orders passed at

Lucknow stands merged with the order passed at New Delhi rejecting the statutory complaint in 2005. The court of enquiry/trial was conducted at

Lucknow when the petitioner was attached with the Supply Depot, ASC, Lucknow. The proceedings were initiated on 22.7.1994 under Army

Rule 22. The reprimand order was passed and served outside the jurisdiction of this Court. The pith and substance of the charge was one of lack

of supervision exercised at Lucknow by the officer and some others. The report of short material from Fatehgarh was received at Supply Depot,

ASC on arrival. The lack of supervision at Lucknow is attributed to faulty loading and lashing of tins without due care, over which, the petitioner

had control and supervision at Lucknow as an officer of the army. The pith and

substance of the charge was not that the tins may have leaked on the way resulting in the weight loss but that the loading and lashing and secure packing of consignment of refined mustard oil was remiss to start with which resulted in loss to the army. Therefore, mere discrepancy or shortage found and confirmed at Fatehgarh, Punjab on weighment by itself is neither a cause of action nor part of cause of action as it was consequential to defective loading and lashing material under transportation. The loss of material in transit is not disputed which was conveyed immediately to Lucknow on arrival. Therefore, the loss of material found at Fatehgarh is not a distinct part of cause of action to my mind, the proof or disproof of which the action can be said to partly rest. Improper lashing, control and supervision which could have averted loss to the army is the cause of action and all parts of it revolve around that charge of misconduct subject matter of the Court of Inquiry and award of punishment inflicted at Lucknow. The "right of action" may have accrued either at Jalandhar where the petitioner was posted and residing only to be conveyed the final adverse order or on the date of filing of the petition or at Supply Depot, Fatehgarh where the loss was discovered but it cannot be said in either case that the cause of action or part of cause of action has accrued either at Jalandhar or at Supply Depot, Fatehgarh, Punjab. Discovery of a fact and confirmation of loss occasioned by acts of omission and commission attributable to actions performed at Lucknow have no bearing on the cause of action wholly or in part arising within the territorial jurisdiction of this Court. If this Court entertained two writ petitions and passed ex parte directions to decide the statutory complaint of the petitioner lying pending for long in my view would not confer territorial jurisdiction on this Court to decide the present petition on merits. The present petition having been entertained in 2005, having received reply would yet leave open for decision on the objection as to maintainability of the petition which this Court is called upon to decide. It deserves highlighting that this case has remained in motion hearing throughout and was not admitted to regular hearing after appearance of the respondent army or hearing it effectively on its preliminary objection accepting or overruling it. Therefore, for the preceding reasons the objection as to lack of territorial jurisdiction of this Court to maintain the instant petition is upheld. The writ petition is accordingly

dismissed for want of territorial jurisdiction of this Court. 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.