
(2011) 03 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 2833 Of 2010

Mukesh Kumar Meena

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(i)
Civil Procedure Code, 1908 — Section 20
Rajasthan Urban Improvement Act, 1959 — Section 52(2)
Central Civil Services (Procedure) Rules, 1987 — Rule 6
Constitution Of India, 1950 — Article 226, 226(2)

Citation : (2011) 03 CAT CK 0001

Hon'ble Judges : M.L. Chauhan, J; Shailendra Pandey, Member (A)

Bench : Division Bench

Advocate : Rajender Khatter

Final Decision : Dismissed

Judgement

M.L. Chauhan, J

1. The applicant has filed this OA, thereby prayed for the following reliefs:

8.1 To allow the present petition U/S 19 R/W 25 central administrative tribunal act 1985 to be decided by the principal bench considering the facts of the present case;

8.2 To quash the impugned Memorandum (Annexure: A) in so far as it permits appointments to be made in contravention of the statutory rules.

8.3 To direct the Respondent to suitably modify the Memorandum for alternate appointment (Annexure A) within the four corners of the Constitution.

8.4 To quash, the memorandum (Annexure: A) holding the same to be illegal and void and declare the same as voidable.

8.5 To direct Respondent to keep the post vacant as prayed in the representation.

8.7 To consequently quash the impugned promotion order dated 15.06.2009 (Annexure: D) as unconstitutional;

8.8 To consequently direct the Respondents to terminate forthwith ad hoc appointments in contravention of the statutory rules, especially Orders dated 15.3.2010 (Annexure :A) and dated 15.06.2009 (Annexure : D) made under the said Office Memorandum.

8.9 To direct the Respondents to consider the petitioner for the alternate appointment as per request letter in alternate category in any division.

8.10 To issue any such and further order/directions this Hon ble Tribunal deems fit and proper in the circumstances of the case; and

8.11 To allow exemplary costs of the application.

2. At this stage, few facts may be noticed. The office of the General Manager, South-Central Railway, Secundrabad placed an indent for various

posts and based on that employment notice dated 1/2008 was published by the Railway Recruitment Board (RRB) Secundrabad. Pursuant to the said

employment notice applicant applied for the post of Junior Engineer Grade-II (Carriage and Wagon), category No.18. As per the terms and conditions

stipulated in the employment notice applicant if appointed was to be placed directly under the control of Divisional Railway Manager (DRM)/General

Manager, South Central Railway, Secundrabad, Andhra Pradesh. The case set up by the applicant in this OA is that he has not only qualified written

examination/aptitude test but he was also selected for the post of Junior Engineer Grade-II after verification of original certificates/documents. It is

further the case of the applicant that thereafter applicant was to contact the Chief Personnel Officer of the South-Central Railway and he was also

asked to undergo Medical Board. However, he was not found fit in A, B and B-1 categories but was found fit for B-2 and below medical categories.

As such, the applicant could not be given appointment against the post of Junior Engineer Grade-II. The grievance of the applicant is that he should

have been given alternative appointment against any other post in view of the fact that he has been found fit for B-2 and below medical categories. It

is on the basis of these facts the applicant has prayed for the aforesaid reliefs.

3. The respondents have filed the reply. The facts stated as above, have not been disputed. However, by way of preliminary objection the respondents

have stated that this Tribunal has got no territorial jurisdiction to entertain the

matter. It is stated that the employment notice No.1/2008 has been issued by RRB, Secundrabad and the applicant while applying to the post of Junior Engineer Grade-II (Carriage and Wagon) was aware of the terms and conditions that as per para-21 of the employment notice No.1/2008 it was clearly mentioned that for any legal action arising out of the Employment Notice, the jurisdiction shall be Hyderabad only.

Respondents have further stated that in order to maintain this OA applicant has wrongly impleaded respondents 1 and 3 as party respondents, whereas the selection process was initiated by the office of the General Manager, South Central Railway, Secundrabad, which has not been impleaded as a party respondent in this OA and it was the office of the General Manager, South-Central Railway, Secundrabad, who has to give appointment to the applicant in case he was selected pursuant to the aforesaid advertisement.

Respondents have further stated that the applicant is not entitled to any alternative appointment in view of the policy decision dated 25.5.2009

(Annexure R-IV), whereby the instructions issued by the Railway Board earlier to the extent that in rarest case the alternative appointment should be

given to medically unfit candidates empanelled by the RRB/RRCB for Group C and D posts in alternative category subject to fulfillment of other

conditions where there is acute shortage of staff on account of non-filling up of the vacancies, has been superseded and the Railway Board has

decided to discontinue the policy of providing alternative appointment to the medically unfit candidates selected through RRB.

4. We have heard the applicant, who was present in person and the learned counsel for the respondents. We are of the view that the present OA is

required to be dismissed on the ground that this Tribunal has got no territorial jurisdiction to entertain the matter. As already stated above, the selection

process was initiated at the behest of the office of the General Manager, South-Central Railway, Secundrabad, Andhra Pradesh and the applicant was

to be given appointment by the DRM/General Manager, South-Central Railway, Secundrabad, Andhra Pradesh. Simply because the applicant is

residing at New Delhi and his permanent address is of New Delhi will not confer jurisdiction upon this Tribunal in view of the provisions contained in

Section 19 (i) of the Administrative Tribunals Act, 1985 read with Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987. It may be

relevant to submit here that the matter on this point was considered at length by the Jaipur Bench of this Tribunal in Jitendra Kumar Mittal v. Union of

India & Ors., 2006 (1) SLJ (CAT) 393. The Jaipur Bench has considered the scope of Article 226 of the Constitution of India read with Section 20 of

the CPC and in the light of the provisions contained in Section 19 (i) of the Administrative Tribunals Act, 1985 and Rule 6 of the Central

Administrative Tribunal (Procedure) Rules, 1987, the Bench after noticing the aforesaid relevant provisions in para-8 onwards has held as under:-

Now let me notice the relevant provisions of the Administrative Tribunals Act, 1985 and Rule 6 of the Central Administrative Tribunal (Procedure)

Rules, 1987. Section 19(1) of the Administrative Tribunals Act reads as follows:

19. Applications to Tribunals.- (1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the

jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation For the purpose of this sub-section "order" means an order made-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation

(or society) owned or controlled by the Government: or

by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in Clause (a)

(2) ..

Similarly, Rule 6 of the CAT (Procedure) Rules is in the following terms: 6 Place of filing applications. (1) An application shall ordinarily be filed by an

applicant with the Registrar of the Bench within whose jurisdiction.

(i) xxx "xxx" xxx

the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principle Bench and subject to the orders under

Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

2 ..

According to Section 19(i) of the Administrative Tribunals Act, the aggrieved person can maintain an application before the Tribunal within whose

jurisdiction the order is passed and is aggrieved of it. This section specifically does not provide that this Tribunal has jurisdiction regarding the order

passed outside the State to entertain an application in terms of Section 19(i) of the Administrative Tribunals Act as is mandated under Article 226(2)

of the Constitution of India. The place where the impugned order was passed should be within the jurisdiction of this Tribunal and normally the place

of the order is the place where the respondent who passed the order, is situated or resides. Therefore, in my opinion, the order is being passed in

Delhi, this Tribunal would not have any jurisdiction in view of the mandate of Section 19(i) of the Administrative Tribunals Act. On the contrary, as

already stated above, the scope of Article 226 is wide enough and the Hon ble High Court can exercise jurisdiction in relation to the territory within

which the cause of action wholly or in part has arisen. For exercise of such powers were residence of the person does not confer jurisdiction unless

the cause of action or part of cause of action arose within the jurisdiction of the Tribunal, which is not the case before this Tribunal in view of clear

mandate of Section 19 of the Administrative Tribunals Act. It is no doubt true that Rule 6 of the CAT (Procedure) Rules provides that the Tribunal

would have jurisdiction even if part of cause of action has arisen. In other words there shall be action on the part of the authorities within the

jurisdiction in pursuance of the order passed by the other authority situated outside the jurisdiction. In order to bring the case within the ambit of the

aforesaid situation, only such cases are covered where for example, a person has been transferred from Station-A to Station-B and he was not

allowed to join duty at Station-B. In that eventuality, the person aggrieved can file an application at both stations i.e. at Station-A and Station-B as the

cause of action has arisen where the transfer order is passed and also where he was to join after transfer. Likewise, if any person who is working in

different places and if the dispute relates to the grant of higher pay scale a part of cause of action to receive the higher pay scale is available to him in

all the places and as such he could maintain an application before the Bench where he was working as part of cause of action arises at the place

where he is working. However, in the case of the applicant simply because he is residing in Jaipur and he has sent an application for appointment to

the appropriate authority at Delhi and he has also received the rejection letter passed by the Delhi authorities at Jaipur, therefore, part of cause of

action arises at Jaipur cannot be accepted as this fact has no bearing with the lis or dispute involved in the case. Further, cause of action means that

bundle of facts which person must prove, if traversed to entitle him to a judgement in his favour by the Court. Thus, receipt of the communication at

best only gives the party right of action based on the cause of action arising out of the action complained of but certainly it will not constitute cause of

action on the pleas that some events, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of this Tribunal.

9. The view which has been taken by this Tribunal is no longer res-integra and is fully supported by various decisions of the Apex Court as well of the

High Court, few of which are noticed here.Â In the case of Union of India and Ors. v. Adani Exports Ltd. and Another, AIR 2002 SC 126, the Apex

Court has held that existence of the registered office of a Company within territorial jurisdiction of the Court does not ipso facto give a cause of action

to that Court. It was further held that in order to confer jurisdiction on a High Court to entertain a writ petition, the High Court must be satisfied from

the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which

has, at least in part, arisen within its jurisdiction. It was further held that facts which have no bearing with the lis or the dispute involved in the case, do

not give rise to a cause of action. Further, the Full Bench of the Kerala High Court in the case of Naik Nakul Deb Singh etc. v. Deputy Commandant

(CISF Unit), Kottayam and Ors., 1999(6) SLR 381 has held that receipt of communication by itself does not constitute cause of action. At the best

receipt of the order or communication only gives the party right of action based on the cause of action arising out of the action complained of. When

that action takes place outside the territorial jurisdiction of the High Court and an appeal therefrom is dismissed by an Appellate Authority located

outside the jurisdiction of the High Court cause of action wholly arises outside the jurisdiction of the High Court and Article 226(2) of the Constitution

cannot be involved to sustain a writ petition on the basis that part of cause of action has arisen within the jurisdiction of the Court, merely because the

appellate order communicated and received while the petitioner was residing within the jurisdiction of the Court.

10. Moreover, in AIR 1985 SC 1289, State of Rajasthan and Others v. M/s Swaika Properties and Another, the Hon ble Supreme Court has ruled that

even for the purpose of exercise of jurisdiction under Article 226(2), mere service of notice does not give rise to part of cause of action unless the notice is an integral part of the impugned order. Accordingly, it was held that only because the petitioner in that case received notice under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 at Calcutta, no cause of action or part of cause of action arose in Calcutta, since the acquisition was done in Rajasthan by passing the appropriate order and consequently the notified land vested with the Rajasthan Government. Thus, as per the law laid down in this case it is clear that neither the cause of action nor part of cause of action would arise to the applicant only because he received the impugned order passed in Delhi in Jaipur. Even the Hon ble High Court of Karnataka in Narayan Swamy G.V. v. Union of India and Others, 1998(5) Kar. L.J. 279 held that mere residence of the person does not confer jurisdiction unless the cause of action or part of cause of action arose within the jurisdiction of the High Court. The Hon ble High Court also referred to the judgment of the Supreme Court in JT 1994(5) SC 1, Oil and Natural Gas Commission v Utpal Kumar Basu and Others in which it was held that only because the respondent before the Supreme Court read advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not constitute facts forming an integral part of cause of action. The Hon ble High Court also took note of the observations of the Hon ble Supreme Court made in Natural Gas Commission's case in Para 12 of the said judgment of the Supreme Court which reads as under:

It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in case which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be falling in our duty to the institution and the system of administration of justice. We do hope that we will not have another

occasion to deal with such a situation

11. In view of the law laid down by the Hon ble Supreme Court as well as by the Hon ble High Court, the fact that applicant is residing at Jaipur and

he has sent an application for appointment to the appropriate authority at Delhi and he has also received the rejection letter passed by the Delhi

authorities at Jaipur, therefore, part of cause of action arises at Jaipur cannot be accepted as this fact has no bearing with the lis involved in the case.

Further, cause of action means that bundle of facts which person must prove, if traversed to entitle him to a judgment in his favour by the Court. Thus

receipt of the communication at best only gives the party right of action based on the cause of action on the plea that some events, however, trivial and

unconnected with the cause of action had occurred within the jurisdiction of this Tribunal.

12. Therefore, in my considered opinion, this application is not maintainable. Accordingly, it is held that the application is not maintainable and Registry

is hereby directed to return the same to the applicant for presentation to the appropriate forum by keeping a copy of the same. No costs.

5. Thus, in view of what has been stated above, this Tribunal has no territorial jurisdiction to entertain the matter, as the cause of action has arisen

wholly or in part outside the territorial jurisdiction of this Tribunal. Accordingly, the present OA is dismissed at this stage, without considering the

matter on merit on the ground that this Tribunal has not got territorial jurisdiction to entertain the matter. It will be open to the applicant to present the

OA before the appropriate forum and Registry is directed to keep one copy of the paper-book by returning other copies to the applicant.

6. In view of what has been stated above, no orders are required to be passed on MA-2773/2010.