
(2003) 12 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19186 of 2002

No.7771092 P Hav/MP Virendra Pal

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 12 AHC CK 0068

Hon'ble Judges : Sunil Ambwani, J

Judgement

Sunil Ambwani, J.—Heard Col. (Retd.) R.A. Pandey, counsel for petitioner and Sri B.K.S. Raghubanshi, Additional Standing Counsel for respondents.

2. Petitioner was enrolled in Military Police (MP) in the APO on 6101978. After Recruit training at Kamptee and Bangalore upto 641979 and 1631980, he was promoted as Lance Naik. Thereafter, he served in various units. The petitioner attended Junior Leadership Course Srl3 held at Bangalore from 273 to 2752000. This is a prerequisite for promotion cadre for promotion from Hav. to Naib Subedar.

3. The petitioner was considered for promotion to the rank of Naib Subedar by the Departmental Promotion Committee twice on 1932001 and 1562002 but was declared unfit as he was not meeting ACR criteria due to earning of Average (2 points) ACR for the year 1997. Petitioner made a representation dated 29112001 followed by a statutory complaint under Section 26 of the Army Act dated 6122001. It is alleged by the petitioner that he was verbally informed that the same was rejected on the ground of lacking ACR criteria. It is alleged that the petitioner's subsequent ACRs from 1998 to 2001 were graded above average i.e. Box Grading 4 points, on which he was entitled to the rank of Naib Subedar. He, however, became overage, on attaining the age of 44 years on September 10, 2002. He completed 24 years of service on 6102002 and will have to superannuate in his present rank of Havaldar. By this writ petition, petitioner has prayed for a writ of certiorari quashing the impugned lowered assessment of

petitioner's ACR of the year 1996 and 1997 dated 1101996 and 1101997 and a direction to grant promotion to the rank of Naib Subedar with retrospective seniority alongwith his batch mates and all consequential benefits. On 1052002, time was allowed to the respondents to file counteraffidavit. Since no counteraffidavit was filed and the petitioner alleged that he will retire before the date of Departmental Promotion Committee, an interim orders were passed as follows:

?The question to be examined is, whether the person otherwise eligible has a right to be considered for next promotion before the date of retirement. In case his retirement fell before the date of D.P.C., he will get a chance. Since petitioner will continue to serve upto 2004, an interim direction is given to the respondents to consider petitioner for promotion, taking into account his last five ACRs earned by him, including the last ACR due on 1102002. His promotion and consequential extension of his period of service , will, however, be subject to the result of the writ petition.

dated 3102002.?

4. A counteraffidavit of AEE Shri S.L. Verma, O.I.C. Legal Cell, 508 Army Base Workshop Fort, Allahabad dated 1482002 was filed by the respondents, raising a preliminary objection that the cause of action is initiation of ACR for the year 1997 and holding of Departmental Promotion Committee at Rangiya and Bangalore respectively, which falls under the jurisdiction of Guwahati High Court or Bangalore High Court, and, therefore, the writ petition is not maintainable at Allahabad. It is stated that as per para 21 of Army Headquarters letter dated 10101997, the jurisdiction for filing Court case/writ petition against the promotion policy is limited to Delhi/New Delhi only. It is alleged that the petitioner never made statutory petition under Section 26 which is to be addressed to the Chief of the Army Staff and not to the Commanding Officer. The petitioner's application was received with a fresh date i.e. 24122001 and that his present unit was informed on 522002 that the petitioner is lacking requisite qualitative requirement. The petitioner was given warning by the Commanding Officer, 21 Mtn. Division Pro Unit vide letter dated 22111997 and written counselling. In para 12 of the counteraffidavit, it is stated that efficacious and legal alternative remedy is available to the petitioner through statutory/non statutory complaint as provided under Section 26 of the Army Act and Army Order 1 of 1999.

5. A supplementary counteraffidavit of Col. R.G. Goswami General Manager (Administration) has been filed stating in paragraph 4 that in pursuance of interim order of this Court the Departmental Promotion Committee on 13th and 14th January, 2003 did not find petitioner illegible for promotion, having become overage and working on the order of extension.

6. The petitioner has not given his residential address in the array of parties. He has described himself to be resident of 71 Sub Area Provost Unit, C/O. 56 APO.

None of the respondents have their office in Uttar Pradesh. In para 5 of the supplementary affidavit of the supplementary affidavit filed in July, 2003, it is stated that petitioner is posted at 340(I) Mechanised Brigade Provost Unit, C/O. 56, APO (at Nasirabad) w.e.f. 1572003.

7. In paragraph 9 of the writ petition, it is stated that petitioner belongs to village Gaggarpur, P.O. Bewar, District Mainpuri. As held by the Apex Court in *Dinesh Chandra Gahtori v. The Chief of the Army Staff and another*, 2001(2) ESC 1275, and by a Division Bench in *Kailash Nath Tiwari v. Union of India & others*, 2002(1) LBESR 367 (All) : 2002(1) ESC 366. The Chief of the Army Staff can be sued anywhere in the country. The petitioner has stated that in view of the ongoing operation deployment it is more convenient for the petitioner to file the present writ petition in this Court, in his home State.

8. In *Lt. Col. (Mrs.) Saroj Mahanta v. Union of India and others*, in writ petition No. 16528 of 2003, a Division Bench of this Court has considered the entire case law with regard to territorial jurisdiction and has held by judgment dated 30/4/2003 as below:

?Thus in view of the above we are of the considered opinion that in order to determine as to whether the writ Court has a jurisdiction to entertain a petition the pleadings in the petition have to be examined and opinion is to be formed as to whether a cause of action partly or fully has arisen or the respondents reside or have office within the territorial jurisdiction of the Court. In absence thereof if the view is taken that petition is to be entertained on merit without considering as to whether such prerequisite conditions are there the provisions of clauses (1) and (2) of Article 226 of the Constitution of India would render nugatory.?

9. This Court also held that Hon"ble Supreme Court in *Dinesh Chandra Gahtori* has not laid down any law of universal application. The observation have been made in the case, to meet a particular situation, where the case remained pending for about a decade, and thus the direction issued therein, if considered in the light of other judgment, does not seem to have a binding effect. The Division Bench has relied upon the Apex Court judgment in *Lt. Col. Khajoor Singh v. Union of India & Ors.*, AIR 1961 SC 532; *Board of Trustees for the Port of Calcutta v. Bombay Flour Mills Pvt. Ltd.*, AIR 1995 SC 577; *Oil and Natural Gas Commission v. Utpal Kumar Basu*, (1994) 4 SCC 711; *Union of India and others v. Adani Exports Ltd. & another*, AIR 2002 SC 126; *Rajasthan High Court, Advocates Association v. Union of India and others*, AIR 2001 SC 416, and other cases and more particularly it has relied upon the judgment in *Oil and Natural Gas Commission v. Utpal Kumar Basu (supra)*, in which it was held by Supreme Court as follows:

?Under Article 226, a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories 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 territories. The expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.

10. Coming to the present case, the petitioner was not posted in a territories of Uttar Pradesh either in 1997 when his case was considered for promotion or when he filed this writ petition. He was considered for promotion at Rangiya in Assam and Bangalore in Karnataka. His petition was not considered by any Army Authorities in Uttar Pradesh. He was posted at 71 Sub Area Provost Unit (Udhampur/J & K) on the date of filing of writ petition and is now posted at 340(I) Mechanised Brigade Provost Unit C/o. 56 APO (at Nasirabad) with effect from 1572003. No part of cause of action has arisen to the petitioner within the territories of Uttar Pradesh. His residence in the district at Mainpuri does not give him cause of action to maintain this writ petition. Even if he is posted in any operational group, he could have maintained the writ petition at the High Court at Delhi and not at Allahabad.

11. In the facts and circumstances of the case, I find that in the present case, the High Court at Allahabad does not have territorial jurisdiction to issue writs under Article 226 of the Constitution of India to the respondents. The writ petition is accordingly dismissed with liberty to petitioner to pursue his remedies in the Court of competent jurisdiction.