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**(2012) 03 KL CK 0296**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 35173 of 2011**

Rajesh. K.K.

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision : 01-03-2012**

**Acts Referred:**

**Citation : (2012) 2 ILR (Ker) 619 : (2012) 2 KLJ 682**

**Hon'ble Judges : K. Surendra Mohan, J**

**Bench : Single Bench**

**Advocate : C.P. Peethambaran, for the Appellant; P. Parameswaran Nair, (ASG of India), for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

K. Surendra Mohan, J.—The petitioner is mentally unsound and is therefore represented by his father, as his next friend and guardian. The petitioner had joined the Assam Rifles in February, 2003. At that time he was mentally and medically fit. He was holding the rank of Rifleman/General Duty (RFN/GD). According to the petitioner on account of the extreme adverse service conditions the petitioner developed depression and psychotic disorder and he was medically boarded out with effect from 5-8-2009, The complaint of the petitioner is that though he was boarded out assessing his disability at 100% his claim for disability pension was rejected by the respondents on the ground that the disease Schizophrenia is not covered by the relevant rule. The petitioner has therefore filed this writ petition challenging the action of the respondents and seeking the issue of appropriate directions for the sanction of disability pension to him. The learned Assistant Solicitor General of India has raised a preliminary objection that this Court does not have the territorial jurisdiction to entertain this writ petition. According to the Assistant Solicitor General, this writ petition is not maintainable before this Court and has to be filed before the court having jurisdiction over the second respondent.

2. In view of the above objection, the question of maintainability has been heard

by me. The counsel for the petitioner submits that as soon as the petitioner was boarded out, the petitioner had returned to his native place which is within the territorial jurisdiction of this Court. It is from his native place that he had submitted an application for the grant of disability pension to the petitioner. Though the same has been rejected by the second respondent, it is contended that a copy of the order was received by the petitioner through post at his native place. Since the petitioner is residing at Kannur, it is contended that this Court has jurisdiction.

3. The learned Assistant Solicitor General on the other hand contends that the petitioner's service was under the second respondent, the alleged disability suffered by him was while working at Assam under the second respondent and he was boarded out on account of his disability at Assam. His claim for disability pension was also considered by the second respondent who is at Assam and therefore no part of the cause of action has arisen within the territorial jurisdiction of this Court. According to the counsel, the present case is covered by the decision in *Lt. Col. Mahender Singh Yadav v. Union of India* (2008 (4) K.H.C. 916).

4. The counsel for the petitioner on the other hand places reliance on the decision in *Abdul Sattar v. Union of India* (1983 KLT 681) to contend that this Court has the requisite territorial jurisdiction to entertain this writ petition.

5. I have heard the counsel for the petitioner as well as the learned Assistant Solicitor General. I have also considered the rival contentions advanced before me.

6. It is to be noted that the petitioner was serving under the second respondent under the Assam Rifles. According to the petitioner, it was due to the adverse climatic conditions at Assam that he developed depressive mental disorders that ultimately led to his discharge from the Army. It can therefore be seen that no part of the petitioner's service has been within the territorial jurisdiction of this Court. The petitioner's claim for disability pension was also made to the second respondent who is at Assam. The same was considered there and was rejected as per Ext. P-7. The only ground on which the petitioner contends that this Court has the requisite territorial jurisdiction is that his place of residence is at Kannur and that he had received Ext. P-7 by post at the said place. The above two aspects are not sufficient to confer territorial jurisdiction on this Court.

7. A similar issue had arisen for the consideration of a Single Bench of this Court in the decision reported in 2008 (4) K.H.C. 916 (*supra*). In the said case, the petitioner who was a Lieutenant Colonel had challenged the denial of selection and promotion to him. The selection process had been held outside Kerala. This Court, after considering the contention regarding lack of territorial jurisdiction held that since no part of the cause of action had arisen within the jurisdiction of this Court, this Court lacked territorial jurisdiction to entertain the writ petition. For the purpose of conferring territorial jurisdiction, what is material is the facts

that constitute the cause of action. It is not every fact that would constitute a cause of action. It is only a material, essential or integral part of the cause of action that would confer territorial jurisdiction on this Court. After considering the issue in detail, this Court has concluded the issue in the following words at paragraph 14 of the judgment:

Since what has been challenged in this writ petition is the proceedings of the selection board any portion of the cause of action can be said to have arisen within the jurisdiction of this Court either if the petitioner had rendered any portion of the service which was assessed by the selection board, at a station within the jurisdiction of this Court or at least, the selection board had conducted their proceedings within the jurisdiction of this Court. Both these facts are absent in the present case. The mere fact that the Government of India is also a party to the writ petition, would not be relevant insofar as the question as to whether any portion of the cause of action had arisen within the jurisdiction of this Court is concerned.

Applying the above dictum to the facts of this case, the fact that the petitioner is residing at Kannur or the fact that the petitioner has received Ext. P-7 by post at Kannur are not integral or essential parts of the cause of action capable of conferring territorial jurisdiction on this Court. The counsel for the petitioner has placed reliance on the decision in *Abdul Sattar v. Union of India* (supra). That was a case in which a Railway employee had been compulsorily retired from service on the basis of the report of an enquiry conducted departmentally. While considering whether this Court had jurisdiction to entertain the writ petition, this Court took note of the fact that the officer who conducted the enquiry was having his office at Palghat within the territorial jurisdiction of this Court. Some of the sittings at the enquiry had also been held at Palghat. For the above reason it was held that part of the cause of action had arisen within the territorial jurisdiction of this Court. However, in the present case no part of the cause of action has arisen within the territorial jurisdiction of this Court. Therefore, it has to be held that this writ petition is not maintainable before this Court.

For the above reasons, this writ petition is dismissed as not maintainable. However, it is made clear that the dismissal of this writ petition is without prejudice to the rights of the petitioner to pursue the remedies available to the petitioner before the appropriate forum.