

(2006) 08 P&H CK 0491
In the Punjab And Haryana At Chandigarh

Ram Mehar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2006) 144 PLR 698

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioner is resident of village Behlba, Post Office Behlba, Tehsil Meham, District Rohtak (Haryana). He has filed this petition with a prayer for quashing discharge order dated 23.12.2002 (P-5), discharging the petitioner on medical grounds w.e.f. 17.4.2003 due to Low Medical Category for Alcohol Dependence Syndrome.

2. The above mentioned order has been passed at Pune. A further prayer has been made for directing the respondents to either reinstate the petitioner in service with consequential benefits or in the alternative to grant disability pension to him.

3. Few facts may first be noticed. The petitioner was enrolled in the army on 1.9.1983. He was promoted to the rank of Naib Subedar on 13.12.2001. While the petitioner was serving in the Command Hospital (SC) Pune in Q Branch, on 1.4.2002, he was hospitalized in the Command Hospital, Pune, on the grounds that he indulged in excessive drinking and lost his control over his conduct on/off duty. The petitioner was discharged from the hospital on 30.5.2002 and placed under low medical category S-3(T-24) for six months. At the time of recording of his Annual Confidential Report, the petitioner underwent medical examination as he was placed in Low Medical Category. It is claimed that firstly Lt. Col. T.R. John, Specialist Psychiatry examined the petitioner and thereafter Brigadier

Pethe, Consultant (Psychiatry) examined him and stated to have opined on 17.8.2002 as under:

I have been seeing this patient regularly. He has improved considerably. I concur with the opinion and disposal of LT COL TR JOHN CLASSIFIED SPL (PSY) dated 17 August 02.

4. It has, therefore, been claimed that as on 22.8.2002, the petitioner was absolutely fit to serve in the Army. He was sent for admission for recategorisation on 16.11.2002. It is alleged that the Commander or the Officer Commanding Troops did not bother to send the petitioner for AFMSF-10, where he was sent only in the month of January 2003 that too with false, baseless and manipulated facts and figures. It is alleged that the service of the petitioner was shown as 28 years instead of 18 years. The Officer Commanding Troops had shown the number of Redink entries as three in place of one. It has further been alleged that as a result of the above mentioned malafides the petitioner was not provided with any escort, treatment and no counseling was given to him during his hospitalization till 17.4.2003. It has also been averred that the Medical Board did not follow the instructions as contained in AO 3/2001 on Health Care System in Army. Ultimately the petitioner was discharged from Army Service vide discharge order dated 23.12.2002 (P-5), on medical grounds w.e.f. 17.4.2003 due to Low Medical Category for Alcohol Dependence Syndrome. It has also been alleged that the impugned discharge order has not been passed by the competent authority i.e. the Commandant Command Hospital (SC) Pune but the same has been sanctioned by the Registrar of the Hospital. Against the aforementioned discharge order the petitioner submitted a statutory petition on 23.5.2003 (P-1), which was rejected on 4.8.2004 by the Chief of Army Staff, Army Head Quarters, DHQ Post Office, New Delhi (P-2). Thereafter the petitioner served a notice, dated 15.9.2003, u/s 80 of the CPC to the respondents (P-4). The claim of the petitioner for grant of disability pension has been rejected by the Principal Controller of Defence Accounts (Pensions), Gomti Ghat, Allahabad, vide his letter dated 9.7.2004 (P-6). The appeal preferred by the petitioner against the aforementioned order has also been rejected vide order dated 19.1.2005 (P-7). The second appeal of the petitioner has also been rejected by the competent authority, vide order dated 17.3.2006 (P-8). When the learned Counsel for the petitioner was confronted as to how this Court has the territorial jurisdiction to entertain the present petition, inasmuch as, the impugned discharge order dated 23.12.2002 (P-5), has been passed at Pune and all subsequent orders have either been passed by the respondent authorities at Allahabad or Delhi, Mr. Gurcharan Dass, learned Counsel for the petitioner, has placed reliance on a judgment of Hon'ble the Supreme Court in the case of Dinesh Chandra Gahtori v. Chief of Army Staff and argued that as per the law settled in the aforementioned case, the Chief of Army Staff (respondent No. 2 herein) can be sued anywhere in the country. He has further contended that even otherwise the petitioner who is a resident of village Behlba, Post Office Behlba, Tehsil Meham, District Rohtak, is competent to invoke the extra ordinary

writ jurisdiction of this Court.

5. We have thoughtfully considered the submissions made by the learned Counsel for the petitioner and are of the view that this Court does not have any territorial jurisdiction to deal with the dispute raised. The petitioner was posted at Pune on 23.12.2002 when the discharge order was passed. The statutory petition against the aforementioned discharge order has been rejected on 4.8.2004 by the Chief of Army Staff, Army Head Quarters, DHQ Post Office, at New Delhi (P-2). His claim for grant of disability pension has been rejected by the Principal Controller of Defence Accounts (Pensions) at Allahabad, vide letter dated 9.7.2004 (P-6). The appeal preferred by the petitioner against the aforementioned order has been rejected at New Delhi, vide order dated 19.1.2005 (P-7). The second appeal of has also been rejected by the competent authority at New Delhi, vide order dated 17.3.2006 (P-8). Therefore, there is no cause of action which might have arisen within the States of Punjab and Haryana and Union Territory, Chandigarh.

6. In the case of *Rajendra Kumar Mishra v. Union of India and Ors.* 2005 Lab. I.C. 2229, the jurisdiction of the Allahabad High Court was sought to be invoked by a person who was serving the Indian Army when he was posted at Kanchanpura at Calcutta (West Bengal). Court martial proceedings against him were held at the same place and he was awarded punishment there only. He challenged the order of punishment alongwith other summary court martial proceedings. The petitioner in that case was residing within the jurisdiction of the Allahabad High Court and merely on that basis the Full Bench of the Allahabad High Court refused to entertain the petition by observing that no part of cause of action has arisen within the territorial jurisdiction of that Court.

7. Similarly, a Seven Judges Bench of Hon''ble the Supreme Court, has taken the view in the case of *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, , that merely because the petitioner resides within the territorial jurisdiction of a Court would not be sufficient to clothe such a Court with the territorial jurisdiction. Similar view has also been taken in the cases of *Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another*, ; *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, ; and *Rajasthan High Court Advocates'' Association v. Union of India* AIR 2001 SC 416. The judgment of the Hon''ble Supreme Court in *Dinesh Chandra Gahtori''s* case (supra) on which reliance has been placed by the learned Counsel for the petitioner has also been dealt with by the Full Bench of the Allahabad High Court by observing that the same cannot be construed to mean that any absolute proposition had been laid down by keeping it open to the petitioner to file a writ petition in any High Court of the country. Such an absolute proposition has not been accepted as it would lead to conflicting decisions as different petitions could be filed in different High Courts by co-accused in the same case and conflicting decisions could be given. The law laid down by seven Judges Bench in the case of *Lt. Col. Khajoor Singh* (supra) and other cases has been held to be binding.

8. In view of the above, we dismiss the writ petition for want of territorial jurisdiction by leaving it open to the petitioner to file any other petition on the same cause of action in a Court which has territorial jurisdiction.