
(2002) 03 MP CK 0080
In the Madhya Pradesh High Court
Case No : L.P.A. No. 28 of 2002

Ram Narain Singh

APPELLANT

Vs

Chief of Army Staff and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Army Act, 1950 — Section 164(2), 39

Citation : (2002) 2 JLJ 86 : (2002) 2 MPLJ 623

Hon'ble Judges : Bhawani Singh, C.J; K.K. Lahoti, J

Bench : Division Bench

Advocate : P.N. Dubey, for the Appellant; O.P. Namdeo, for the Respondent

Judgement

Bhawani Singh, C.J.

This Appeal is directed against the order of learned Single Judge dated 27.11.2001 whereby, the learned Single Judge has dismissed the writ petition for want of jurisdiction.

Petitioner was sepoy in the trade of tinsmith of Army Supply Corps. He proceeded on casual leave for 20 days with effect from 11.8.1998 to 30.8.1998 to his home in Rewa (Madhya Pradesh). While availing the leave, he fell ill. He informed the Commanding Officer about it on 20.8.1998 and 23.9.1998. He also submitted application for extension of leave for two months for reason of illness and also sent medical certificate after recovering from the illness. Ultimately, he reported for duty on 1.11.1998 but he is described to have joined on 5.11.1998 for overstay of leave, charge-sheet was prepared u/s 39(b) of the Army Act, 1950. This happened when he was at Bangalore. The Court martial was conducted at Bangalore and the charge-sheet was also issued at the same place. Court martial proceedings resulted in the dismissal of the Petitioner at Bangalore, where order of dismissal was given. However, Petitioner challenged the order of dismissal through appeal submitted to the Chief of Army Staff, Army Headquarters, DHQ Post, New Delhi dated December 23, 1999. Order dated October 10, 2000

demonstrates that appeal of Petitioner was placed before the Chief of Army Staff and was rejected.

Through Writ Petition No. 3329/2001, Petitioner has challenged his dismissal by the Respondents on a number of grounds. Respondents prayed for dismissal of the writ petition for want of jurisdiction on the ground that Respondents No. 2 and 3 reside at Bangalore. Their office was at Bangalore (Karnataka), while Chief of Army Staff was in Delhi. No part of cause of action arose within the State of Madhya Pradesh. Petitioner submits that this Court has jurisdiction over the matter because he overstayed the leave at Rewa within the jurisdiction of this Court. He filed the appeal from Rewa. He received i.e. order of dismissal of his appeal at Rewa despatched from New Delhi. There is no dispute that Court-Martial proceedings proceeded by Charge-sheet were held at Bangalore. There is no dispute that order of dismissal was passed at Bangalore and served on the Petitioner over there. However, statutory appeal against the order of dismissal lies to the Chief of Army Staff u/s 164(2) of Army Act, 1950 submitted from Rewa under the jurisdiction of this Court. It, has been decided by Chief of Army Staff and order of rejection of appeal is communicated to the Petitioner at Rewa in Madhya Pradesh. Therefore, the decision applicable in this case should be *Dinesh Chandra Gahtori v. Chief of Army Staff* which holds that placing reliance only on the cause of action would not be justified. Chief of Army Staff may be sued anywhere in the country. We have found that statutory appeal lies to Chief of Army Staff under Army Act, 1950 which has been rejected by the Chief of Army Staff and communication sent to the Petitioner to his village in Rewa, in the State of Madhya Pradesh. Therefore, in the light of Apex Court decision, it is not difficult to hold that this Court has jurisdiction to entertain the petition and decide the controversy. Consequently order of learned Single Judge dated 27.11.2001 is set aside, case remanded for consideration and decision on merits.