

(2000) 08 PAT CK 0103
In the Patna High Court
Case No : C.W.J.C. No. 10030 of 1999

Santosh Kumar Sharma

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 PLJR 408

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Heard learned Counsel for the Petitioner and Mr. Singh, learned Additional Standing Counsel appearing for the Respondents.

2. Learned Additional Standing Counsel has raised a preliminary objection on the question of maintainability of this writ petition in this Court. According to him this writ petition suffers for want of territorial jurisdiction as the impugned order of dismissal was passed at a place which does not fall within the territorial jurisdiction of this Court. At the time of passing of the said order the posting of the Petitioner was outside the jurisdiction of this Court and the Respondents also reside outside the jurisdiction of this Court.

3. Learned Counsel for the Petitioner, on the other hand, has submitted that by the impugned order, contained in Annexure 1, the Petitioner was awarded with the punishment (i) to suffer rigorous imprisonment for three months, and (ii) to be dismissed from the service, but in the same order it was mentioned that in case he wishes to address the GOC-in-C Southern Command or any authority superior to him, his petition, if any, may be forwarded to the address "Headquarters, Southern Command, Pune". Accordingly, the Petitioner moved the Chief of Army Staff, vide Annexure-2 and the rejection of which was communicated to the Petitioner, vide Annexure 7, to his village home which falls

within the territorial jurisdiction of this Court. As such, according to the learned Counsel for the Petitioner the present writ petition is very much maintainable in this Court.

4. Mr. Singh, learned Additional Standing Counsel, in reply, has referred to the decision of the Division Bench of this Court in the case of Nand Kishore Singh v. Union of India reported in 1983 PLJR 54. In paragraph 11 of the said decision the Division Bench did not accept the contention that the act of merely filing an appeal against an adverse order, which has been already carried out should be deemed to be a part of the cause of action for choosing the forum for filing an application under Article 226 of the Constitution of India. Accordingly, it was held that this Court has no jurisdiction to interfere with the impugned order of dismissal of the Petitioner and his removal from the service was passed at Naya Nangal i.e. beyond the territorial jurisdiction of this Court.

5. Learned Counsel for the Petitioner has placed reliance on a subsequent Division Bench decision of this Court in. the case of Brig. Ashok Malhotra Vs. The Union of India (UOI) and Others, , to which I was also a member.

6. This Court is unable to appreciate as to how the said decision is of any help to the Petitioner. In the case of Brig. Ashok Malhotra v. Union of India (supra), the impugned order was held to have taken effect after they were communicated to the Petitioner while he was posted as Commander of Bihar and Orissa Sub-area, Danapur Cantonment and as such the Court has held that the cause of action for the writ petition arose within the territorial jurisdiction of this Court.

7. In the present case, it is not the case of the Petitioner, that at the time of passing/communication of the impugned order, the Petitioner was posted within the territorial jurisdiction of this Court. Thus, in my opinion, the present case is squarely covered by the principle decided in the earlier Division Bench decision in the case of Nand Kishore Singh (supra) para 11.

8. The writ petition, thus, suffers for want of territorial jurisdiction and it is, accordingly, dismissed.