

(2005) 10 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (C) No. 11860 of 2005

Sri Prasanna Kumar Dash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226(2)

Citation : (2005) 10 OHC CK 0025

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : A.K. Mishra and M.R. Mohapatra, for the Appellant; D.N. Misra, Central Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ application has been filed against the judgment and order dated 15.07.2005 passed by the Central Administrative Tribunal, Cuttack Bench, in O.A. No. 569 of 2005 dismissing the same as not maintainable on the ground of jurisdiction. The reason assigned by the Tribunal to come to the aforesaid conclusion is that all the Respondents before it are located at New Delhi and, as disclosed by the applicant, he was working as Survey of Works (C), Civil Construction Wing, All India Radio, Film Division Complex, 24- Peddar Road, Mumbai and the O.A. was filed being aggrieved by the order of the disciplinary authority (President of India) dated 04.04.2005, received by the Petitioner on 05.05.2005.

2. It was averred by the Petitioner in the O.A. that the order passed by the disciplinary authority is the outcome of a disciplinary proceeding initiated against him while he was posted as Executive Engineer, Civil Construction Wing, All India Radio, Bhubaneswar. On the query of the Tribunal, it was apprised by the Petitioner that the O.A. was filed before that Bench on the ground that charge memo was served on him when he was posted at Bhubaneswar and the enquiry

was also carried out till its completion when he was posted at Bhubaneswar. Therefore, a part of the cause of action had occurred within the territorial jurisdiction of the Central Administrative Tribunal, Cuttack Bench. The Tribunal has, however, dismissed the O.A. on the ground that the Petitioner was not residing within Orissa and was residing at Mumbai at the time of filing of the O.A. In this writ petition, the Petitioner has not only challenged the order of the Tribunal as well as that of the disciplinary authority imposing penalty on him, but also has prayed for quashing of the entire disciplinary proceeding. The charge memo is a part of the disciplinary proceeding, quashing of which is sought.

3. On a perusal of the copies of the documents annexed to the writ application, it appears that a part of the cause of action had arisen in the State of Orissa. The disciplinary proceeding was started against the Petitioner vide order dated 11.06.1998 of the Government of India, when he was posted as Executive Engineer, Civil Construction Wing, All India Radio, Bhubaneswar. The relevant portion of the said order is quoted hereunder:

C-14011/1/97-Vig. GOVERNMENT OF INDIA MINISTRY OF INFORMATION 7
BROADCASTING **** New Delhi, Dated 11.06.1998.

MEMORANDUM

The President of India proposes to hold an inquiry against Shri Prasanna Kumar Dash, Executive Engineer, Civil Construction Wing, All India Radio, Bhubaneswar under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom the article of charge is proposed to be sustained are also enclosed (Annexure-III and IV).

In the statement of article of charge also, his designation has been mentioned as Executive Engineer, Civil Construction Wing, All India Radio, Bhubaneswar.

4. In Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, it has been provided that the application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction either the applicant is posted for the time being or the cause of action, wholly or in part, has arisen. It has also been provided that such application, with the leave of the Chairman, may be filed with the Registrar of the Principal Bench. In case a person is ceased to be in service, he may file an application at his option with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. Rule 6 is extracted hereunder:

6. Place of filing application - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-

(i) the applicant is posted for the time being, or

(ii) the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders u/s 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in Sub-rule (1) a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

5. In Clause (2) of Article 226 of the Constitution of India, it has been provided that directions, orders or writs to any Government, authority or person may be issued by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Thus, the provision of Rule 6 of the CAT (Procedure) Rules, 1987 with regard to exercise for jurisdiction in relation to territories by a Bench of the Tribunal is *pari materia* with that contained in Clause (2) of Article 226 of the Constitution in respect of exercise of jurisdiction by the High Court.

6. In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, the Hon'ble Apex Court in para-6 of its judgment has held as under:

6. Cause of action implies a a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the Defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

It has further been held by the Apex Court in the above case that when an order is passed by a Court or Tribunal or an executive authority, whether under provisions of a statute or otherwise, a part of cause of action arises at that place.

7. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, , it has been held by the Supreme Court that the question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial, and also that all necessary facts must form an integral part of the cause of action.

8. In view of the above-mentioned facts and circumstances when the Petitioner has sought a relief for quashing of the entire disciplinary proceeding including the order for its initiation and order of punishment, and since the charge memo, which also forms a part of the proceeding, was served upon the Petitioner when he was posted at Bhubaneswar, though it was issued by the Government of India in the Ministry of Information and Broadcasting, we are of the opinion that a part of cause of action had arisen at Bhubaneswar. Therefore, the Central Administrative Tribunal, Cuttack Bench, has jurisdiction to entertain the O.A. As such, the writ petition has to be allowed in part, the impugned judgment and order passed by the Tribunal is liable to be quashed and the matter is to be remitted back to the Tribunal for decision on merit.

9. In the result, the writ petition is allowed in part. The impugned order passed by the Central Administrative Tribunal, Cuttack Bench, in O.A. No. 569 of 2005 is quashed and the matter is remitted back to the Tribunal for taking decision on merit after restoring the O.A. to its original number. The Petitioner shall appear before the Tribunal on or before 25th of November, 2005. Needless to say, the prayer for interim relief will also be considered by the Tribunal.

Pradip Mohanty, J.

10. I agree.