

(2019) 10 CAL CK 0029

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 18991 (W) Of 2019

Tarak Nath Nayak

APPELLANT

Vs

Director General, Central Reserve Police Force & Ors

RESPONDENT

Date of Decision : 30-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 CAL CK 0029

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Swapan Kumar Nandi, Soumi Kundu, Susmita Saha Dutta

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner is a member of the Central Reserve Police Force. When the petitioner was serving at Kashmir a disciplinary proceeding was initiated against him. The memorandum of charges and the statement of allegations were issued against him in the year 2015. The disciplinary authority passed final order of his removal from service on 16th June, 2016.

The petitioner preferred an appeal against the said order of removal from service which stood dismissed by the appellate authority in September 2016. The revision petition filed by the petitioner also stood rejected by the revisional authority in March 2017.

Being aggrieved by the initiation of the disciplinary proceeding and the orders passed therein by the disciplinary, appellate and the revisional authority the petitioner has filed the instant application under Article 226 of the Constitution of India praying for setting aside of the same.

The petitioner in paragraph nos. 32 and 33 of the writ petition has stated that the records of the instant case are lying within the jurisdiction of the respondents

which is within the appellate side jurisdiction of this High Court. The petitioner further stated that he has been residing within the jurisdiction of this Court after his removal from service and the order of punishment was issued at his residential address within the jurisdiction of this Court. As such, he has craved leave to file the instant application before this Court for redressal of his grievances.

The petitioner submits that he was suffering from various ailments which stood in his way of joining service immediately upon expiry of his leave period. He submitted his detailed reasons supported by legally sustainable documents for not being able to report for work on time. The authority ought to have accepted his defense and allowed him extension of his leave period and ought not to have initiated the proceeding on account of overstay of leave.

The petitioner submits that he has enough merits in his case and prays for a decision in his favour on merits.

The petitioner relies upon the judgment of Nawal Kishor Sharma -vs- Union of India reported in AIR 2014 SC 3607 wherein the Hon'ble Supreme Court held that in order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

The petitioner further relies upon an unreported judgement delivered by a coordinate Bench of this Court on 10th August, 2018 in W.P. 2977(W) of 2017 (Babujee Datta -vs- Union of India & Ors.) wherein the Court relying upon the judgement of Nawal Kishor (supra) entertained the writ petition overruling the objection raised by the respondents with regard to lack of territorial jurisdiction.

The petitioner submits that his case is liable to be considered by this Court relying upon the principle laid down by the Hon'ble Supreme Court duly followed by this Court.

The learned advocate appearing on behalf of the respondents has raised the preliminary objection with regard to the maintainability of the writ petition on the ground of lack of territorial jurisdiction of this Court to decide the issue.

It has been submitted that the entire cause of action arose outside the jurisdiction of this Court. The petitioner was serving outside the jurisdiction of this Court when the disciplinary proceeding was initiated against him. The order was passed by the disciplinary authority as well as the revisional authority outside the jurisdiction of this Court. According to the respondents, no part of the cause of action arose within the territorial limit of the Calcutta High Court and as such the writ petition is liable to be dismissed. Offices of all the respondents are lying outside the jurisdiction of this court.

The respondents rely upon an unreported judgment delivered by a coordinate Bench of this Court on 15th February, 2019 in W.P. 12539 (W) of 2016 (Shri Bapi Biswas -vs- Union of India & Ors.) wherein the Court upheld the objection raised

by the respondents with regard to territorial jurisdiction and dismissed the writ petition filed by the member of the Central Reserve Police Force.

I have heard the submissions made on behalf of both the parties. Since a preliminary objection has been raised with regard to lack of territorial jurisdiction, I propose to decide the said issue prior to entering into the merits of the writ petition.

From the facts pleaded by the petitioner in the writ petition, it appears that when the petitioner was serving at Kashmir he took leave for a particular period. As the petitioner failed to report to duty without any intimation, a warrant of arrest was issued against him, but the same stood cancelled as he joined his duty on 16th June, 2015. A disciplinary proceeding was initiated against him on account of overstay of leave.

The petitioner was given opportunity to present his case before the disciplinary authority. The proceeding was conducted outside the jurisdiction of this court. After hearing the submission of the petitioner order was passed for his removal from service in June 2016.

The appeal preferred by the petitioner was duly considered by the appellate authority at Haryana and the appeal stood dismissed by the appellate authority in December 2016. The revision petition filed by the petitioner also stood dismissed by the revisional authority at Haryana in March 2017.

Apart from communicating the orders impugned herein, starting from the order passed by the disciplinary authority to the order passed by the revisional authority no part of the cause of action appears to have arisen within the jurisdiction of the Calcutta High Court.

The petitioner has tried to contend that as his place of residence is at Burdwan, he overstayed his period of leave at Burdwan, he was treated for his medical ailments at Burdwan and he preferred his petition of appeal as well as his revisional petition from his home State that is West Bengal, accordingly a part of the cause of action arose within this State. The said fact has also been pleaded by the petitioner in paragraph 33 of his writ petition.

The petitioner strenuously relies upon the judgement delivered by the Hon'ble Supreme Court in the matter of Nawal Kishor (supra) wherein the Hon'ble Supreme Court had been pleased to set aside the order passed by the Patna High Court and held that prima facie it appears that a part of the cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

The petitioner submits that in the instant case also all the communications were made to him at his home State that is West Bengal. He further adds that as the appeal and the revision petition was preferred by him from Burdwan accordingly, a part of the cause of action arose within the jurisdiction of this Court.

The petitioner relies upon Babujee Datta (supra) wherein the Court followed the ratio laid down by the Supreme Court and held that the facts of the case of the Nawal Kishor (supra) ought to apply in the said case.

I am not satisfied with the submissions made by the petitioner that a part of the cause of action arose within the territorial limit of this court. The judgement of Nawal Kishor (supra) was passed upon the peculiar facts and circumstances of the said case where the writ petition was entertained at the initial stage for the purpose of grant of interim relief when no such objection with regard to territorial jurisdiction was raised by the respondents. In the instant case, the issue of lack of territorial jurisdiction has been raised by the respondents at the very outset. The facts of the case clearly indicates that the entire part of the cause of action arose outside the jurisdiction of this court barring the fact of making communications to the petitioner at Burdwan and preferring the petition of appeal and revision from Burdwan. The same cannot be treated as an integral part of the cause of action which should be taken into consideration for the purpose of deciding whether the court has jurisdiction to entertain an issue or not.

Since the petitioner is a member of All India Service where his service is transferable from one part of the country to other the cause of action may arise at several places at the same time.

What is important is to ascertain whether the legal right of the petitioner stood infringed within the jurisdiction of the court approached by him. In the case at hand the right of the petitioner stood infringed by the authority outside the jurisdiction of this court. Mere service of the impugned order of rejection of the case of the petitioner by the disciplinary authority, appellate as well as the revisional forum does not give rise to a cause of action to move the extraordinary high prerogative writ jurisdiction of this court.

The Hon'ble Supreme Court in the matter of Oil & Natural Gas Commission -vs- Utpal Kumar Basu & Ors. (1994) 4 SCC 711 specifically held that in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration although without embarking upon an enquiry as regards to the correctness or otherwise of the said facts. The petitioner has pleaded that the entire disciplinary proceeding commenced and concluded outside the jurisdiction of this court. The orders of the various authorities were intimated to the petitioner in his home address. In fact, the petitioner participated in the disciplinary proceeding outside the jurisdiction of this court.

The petitioner has not argued that he will be inconvenienced or prejudiced if he approaches the Court within whose jurisdiction the disciplinary proceeding, appellate or revision petition was considered. The ground of acute health disorder which played a vital role in arriving at the decision by the Supreme Court in the matter of Nawal Kishor (supra) is also absent in the present case.

The decision relied upon by the petitioner in the case of Babujee Datta (supra) is clearly distinguishable on facts. In the said case the petitioner was all through working in Kolkata, the charges related to the alleged acts of the petitioner in Kolkata and the final order of the disciplinary and final authority was served upon him in Kolkata. In the instant case the petitioner was not serving in his home State when the proceeding was initiated or concluded and accordingly the decision cited by the petitioner does not help him in any manner. The discussion made in the case of Bapi Biswas (supra), relied upon by the respondents, is squarely applicable in the instant case.

The Hon'ble Supreme Court in Union of India vs. Adani Export Ltd. (2002)1 SCC 567 held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute. Each and every fact pleaded in the petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action.

In the State of Rajasthan vs. M/S. Swaika Properties & Anr. (1985) 3 SCC 217 the Court held that mere service of notice does not give rise to the cause of action within the territory unless the service of such notice was an integral part of the cause of action.

The High Court is empowered to exercise power under Article 226 of the Constitution of India to issue directions, orders or writs for enforcement of any of the fundamental rights if the cause of action, wholly or in part, has arisen within its territorial jurisdiction notwithstanding the seat of the Government or authority against whom such direction, order or writ is issued is not within the said territories.

Moreover, there is no reason for the Calcutta High Court to assume jurisdiction over the issue only because the impugned orders were served upon the petitioner at his home address, when the substantial and integral part of the cause of action arose beyond the jurisdiction of this court.

In view of the discussions made hereinabove, I am unable to convince myself that the cause of action pleaded by the petitioner forms an integral part of the cause of action to enable the Calcutta High Court to exercise jurisdiction to entertain the writ petition. Accordingly, no relief can be granted to the petitioner in the instant case. The writ petition stands dismissed on the ground of lack of territorial jurisdiction.

Dismissal of the writ petition will however not stand in the way of the petitioner in approaching the appropriate forum for seeking necessary relief in accordance with law, if so advised.

W.P No. 18991 (W) of 2019 stands dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.