
(2010) 05 P&H CK 0342
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11890 of 2008

Union of India (UOI)

APPELLANT

Vs

Dheeraj Gupta and Others

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 26
Constitution of India, 1950 — Article 226

Citation : (2010) 2 ILR (P&H) 883

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The Union of India has invoked extraordinary writ jurisdiction of this Court under Article 226 of the Constitution challenging order dated 13th September, 2007 (P-1), passed by the Central Administrative Tribunal, (J&K Circuit) Chandigarh Bench at Chandigarh (for brevity, "the Tribunal"). At the outset, it may be noticed that earlier on 9th July, 2004 a difference of opinion had emerged between the Judicial and Administrative Members of the Tribunal. Accordingly, u/s 26 of the Administrative Tribunals Act, 1985, the Competent Authority had placed the matter before the Vice-Chairman being 3rd member, It is the Vice Chairman who has passed the impugned order, which is subject matter of challenge before this Court.

2. In nutshell, the private respondent Dheeraj Gupta has raised the dispute with regard to his allocation as I.A.S. Officer to Jammu and Kashmir cadre. He has claimed Haryana cadre as "insider" candidate on the basis of merit list prepared for the Civil Services Examination, 1992. He was at Sr. No. 12 in the All India Merit List and was topper in the State of Haryana, which is his home State. Therefore, he claimed allocation to Haryana cadre as "insider" or in the alternative to Himachal Pradesh. The Tribunal in the impugned order has held that he is entitled for allocation to Haryana cadre. His allocation to Jammu and Kashmir has been set aside. He has also been held entitled to his original seniority in All India Merit List, even after allocation to Haryana because he was

wrongly allocated to Jammu and Kashmir cadre.

3. Mr. D.V. Sharma, learned counsel for respondent No. 1-Dheeraj Gupta has raised a serious preliminary objection at the outset urging that this High Court does not enjoy territorial jurisdiction over this matter. According to the learned counsel, private respondent-Dheeraj Gupta has filed O.A. before the Central Administrative Tribunal, New Delhi, and he later on, got it transferred to Jammu and Kashmir Bench. He has emphasised that the private respondent Dheeraj Gupta has been admittedly allocated to Jammu and Kashmir cadre and merely because the Bench of the Tribunal at Chandigarh has exercised jurisdiction over the State of Jammu and Kashmir, the Punjab and Haryana High Court would not ipso facto, acquire territorial jurisdiction especially when there is High Court of Jammu and Kashmir which could exercise jurisdiction. He has drawn our attention to the observations made by Hon"ble the Supreme Court rendered in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and submitted that even if a small part of cause of action has arisen within the territorial jurisdiction of a High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. Relying on the observations made in para 30 of the judgment, Mr. D.V. Sharma has submitted that in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens."

4. Mr. D.V. Sharma learned counsel for the private respondent Dheeraj Gupta has also placed reliance on paras 13 and 38 of the judgment of Hon"ble the Supreme Court rendered in the case of Ambica Industries Vs. Commissioner of Central Excise, to stress upon the same issue.

5. Mr. A.S. Grewal, learned counsel for the petitioner has, however, vehemently argued that once a cause of action has arisen within the territorial jurisdiction of this Court, it is not necessary that matter be decided by another Court merely because the other Court has also territorial jurisdiction over the dispute between the parties. In order to buttress his stand, Mr. Grewal has placed reliance on paras 29 and 30 of the judgment of Hon"ble the Supreme Court rendered in the case of Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, . He argued that once a part of cause of action has arisen within the territorial jurisdiction of this Court, it is incumbent for this Court to decide the dispute between the parties. He has also placed reliance on a Division Bench judgment of Delhi High Court rendered in the case of M/s. New Horizons Limited and another Vs. Union of India and others, . According to the learned counsel for the petitioner, the Delhi High Court has assumed jurisdiction in a matter where tender notice was published by the General Manager, Hyderabad Telecom for printing and supply of telephone directories, merely because the Union of India and the Ministry of Communication were in Delhi.

6. Having heard the learned counsel for the parties, we are of the considered opinion that it would be appropriate and conducive, if the dispute is decided by

the High Court of the Jammu and Kashmir. It has remained undisputed that the respondent-Dheeraj Gupta, who is an IAS Officer, was allocated to Jammu and Kashmir cadre. He has claimed before the Tribunal that his allocation to Jammu and Kashmir was against the Rules and thus, he deserved to be allocated to Haryana cadre. The Courts at New Delhi or at Jammu and Kashmir would naturally have the territorial jurisdiction for the cause of action has arisen within those territory. The Central Administrative Tribunal, Chandigarh Bench also exercises jurisdiction over the Jammu and Kashmir and Himachal Pradesh and merely because a small part of cause of action has arisen within the territorial jurisdiction of this Court, inasmuch as, order has been passed by the Tribunal at Chandigarh, the same by itself cannot be determinative factor, obliging the High Court of Punjab and Haryana to decide the matter on merit. The rationale for such an approach has been provided by Hon'ble the Supreme Court in para 13 and 38 of the judgment in case of Ambica Industries (supra) which reads as under :

13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or Courts or tribunals outside its territorial, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

38. We have noticed hereinbefore that if the decision of the High Court in the aforementioned question is taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of forum shopping. We may notice some examples to show that the determination of the appellate forum based upon the situs of the tribunal would lead to an anomalous result. For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed.

(emphasis added)

7. A perusal of the aforesaid paras brings out various reasons which are fully applicable to the facts of the present case. The binding authority of the High Court does not extend beyond its territorial jurisdiction as decision of one High Court would not be binding precedent for the other High Court or Courts or Tribunals outside its territorial jurisdiction. If a Tribunal exercising jurisdiction

over an area divided between three High Courts then it does not follow that all the three High Courts acquire territorial jurisdiction. It would result into judicial anarchy. It would also give rise to forum shopping. Likewise, there are other reasons given in para 30 of the judgment rendered in the case of Kusum Ingots and Alloys Ltd. (supra). The rationale provided is that in appropriate cases the High Court would be fully competent to refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens". The aforesaid para 30 reads thus :--

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

8. The other judgments of Hon'ble the Supreme Court on which reliance has been placed by Mr. A.S. Grewal would not require any serious consideration because those judgments do not lay down any different principle of law. Paras 29 and 32 of the judgment in Mayar (H.K.) Ltd. (supra), in nutshell states that the principal place of business would be where the governing power of Corporation is exercised, which may be typically viewed as the nerve centre. From the aforesaid expression of opinion, the argument of Mr. Grewal appears to be that once the Central Administrative Tribunal has its head office at Chandigarh, it must be regarded as principal place of business and clothed with the territorial jurisdiction over the State of Jammu and Kashmir. We are afraid that the aforesaid proposition lose sight of one significant aspect, namely, that the writs issued by the High Court under Article 226 ordinarily run within its territorial jurisdiction and not beyond. The judgements given by the High Court are also binding on the Courts and Tribunals working within the jurisdiction of the High Court. Therefore, the dicta laid down in Ambica Industries (supra) by Hon'ble the Supreme Court cannot be ignored. Moreover, the judgment of Hon'ble the Supreme Court in Mayar (H.K.) Ltd. (supra) proceed entirely in different context and in our view does not have bearing on the facts and circumstances of this case. Therefore, we have no hesitation to reject the argument raised by the learned counsel.

9. Likewise, the judgment of the Division Bench of Delhi High Court in the case of M/s New Horizons Limited (supra) is also not attracted to the facts of the present case. In that case tender was floated by the General Manager, Hyderabad Telecom for printing and supply of telephone directories and Delhi High Court assumed territorial jurisdiction on the ground that the Ministry of Communication was situated in Delhi. Even the facts of the Division Bench judgment of Delhi are entirely different and has no application to the facts of the present case. Accordingly, we reject the aforesaid contention of the learned counsel for the petitioner.

10. As a sequel to the above discussion, we find that this Court has no territorial

jurisdiction over the subject matter raised in this petition. Accordingly, the writ petitioner is relegated to invoke the jurisdiction of the competent Court in accordance with law.

11. The writ petition stands disposed of in the above terms.