

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

P.T.No.162/2020 arising out O.A.No.746/2020

Reserved on:09.11.2020

Pronounced on :11.11.2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

1. Union of India through Secretary,
M/o Finance, Department of Revenue,
North Block, New Delhi,
(Email:rssecy@nic.in Tel: 011-23092510)
2. Chairman, Central Board of Direct Taxes,
M/o Finance, Department of Revenue,
North Block, New Delhi,
(Email:chairmancbdt@nic.in Tel: 011-23092648).

....Applicants

(Through Adovcates: Shri Tushar Mehta, Solicitor General of India for Mr.Ravi Prakash, Shri Aman Malik and Shri Zoheb Hossain, Counsel for the Applicants)

Versus

Ashok Kumar Aggarwal, Aged about 58 years,
S/o Shri R.B.Aggarwal, R/o 56, Akashneem Marg,
DLF Phase-2, Gurgaon, Harayana,
(Compulsorily Retired, ex-Group A Officer),
(Email: vista5kumar@gmail.com Tel:[8527833345](tel:8527833345)),

... Respondent

(Through Advocates: Shri Vikas Singh, Senior Advocate, for Shri S.K.Gupta, Counsel for the Respondent)

ORDER

Justice L. Narasimha Reddy, Chairman

This PT is filed under Section 25 of the Administrative Tribunals Act, 1985, by the respondents in OA.No.746/2020, pending before the Chandigarh Bench of this Tribunal, with a prayer to transfer the same to the Principal Bench.

2. The respondent herein filed OA challenging an order dated 10.06.2019 passed by the appointing authority, under Fundamental Rule 56 (J) retiring him on compulsorily basis, and the order dated 19.08.2019, through which the representation made by him against the said order was rejected. He has also prayed for a direction to the respondents to reinstate him into service and to extend all the promotions, in terms of the various judgments rendered by this Tribunal, Hon'ble High Court and Hon'ble Supreme Court, in his favour

3. The applicants contend that the respondent was an IRS officer, and by taking into the various aspects of his service, the appointing authority passed an order of compulsory retirement on 10.06.2019. It is stated that challenging the order of compulsory retirement, he filed Writ Petition No.9339/2019 before the Hon'ble High Court of Delhi, and on its being not entertained, he approached the Hon'ble Supreme Court by filing SLP as well as Writ Petition under Article 32 of the Constitution of India. It is stated that in all those proceedings, the applicant has stated that he is a resident

of House No.56, Ashoka Road, New Delhi, and at no point of time, he worked within the jurisdiction of the Chandigarh Bench.

4. The applicants state that just by mentioning that he is a resident of Gurugram, in the State of Haryana, he filed OA before the Chandigarh Bench and the same is impermissible in law. According to the applicants, it is only when a retired employee is “ordinarily resident” in a particular place, that he can file the OA before the Bench of the Tribunal within whose territorial jurisdiction, he resides; and not when he has just changed his residence. According to them, even where a person is ordinary resident, the choosing of the forum would be subject to other factors.

5. The applicants further contend that assuming that the respondent is residing at Gurugram, it would be convenient for him to pursue the proceedings before Principal Bench, than before Chandigarh Bench, which is hundreds of kilometer away from Gurugram.

6. Another contention of the applicants is that the voluminous record pertaining to the case is at Delhi, and it would be difficult for them to effectively contest the OA before the Chandigarh Bench. Other contentions are also urged and reliance is placed upon certain judgments rendered by the Hon’ble Supreme Court, on the relevant issues.

7. The respondent filed a counter affidavit by opposing the OA. During the course of hearing, an objection was raised to some of the contents of the counter affidavit and there upon it is stated on behalf of the respondent that no reliance will be placed upon the counter affidavit.

8. Shri Tushar Mehta, learned Solicitor General of India, advanced arguments on behalf of the applicants. He contends that the respondent has pursued various proceedings before the Hon'ble High Court of Delhi and Hon'ble Supreme Court, and the same were not entertained and it was left open to him to approach the Tribunal, he has chosen to file the OA before the Chandigarh Bench. He contends that the very fact that the applicant has filed Writ Petitions before the Hon'ble High Court and Hon'ble Supreme Court, discloses that it is the Courts or Tribunals at Delhi, that have jurisdiction to decide the matter and there was no basis for him to file the OA before the Chandigarh Bench.

9. By referring to various judgments, the learned Solicitor General submitted that the "residence" in the context of Rule 6 of the Administrative Tribunal (Procedure) Rules, must be the one, in which, the person resides in the ordinary course of things, and not the one, chosen incidentally, occasionally or instantly. He has also referred to the adjudication with reference to Article 5 (c) of the Constitution of India. He

further argued that the convenience of the parties is the predominant factor in choosing the forum and if one takes into account, the fact that Gurugram is almost part of National Capital Territory (NCT), the OA deserves to be heard by the Principal Bench, New Delhi, particularly when the applicant did not work, nor any cause of action has arisen, within the jurisdiction of the Chandigarh Bench. It is also argued that the record pertaining to the OA available in Delhi, and even in context of institution of proceedings, post adjudication in the OA, Delhi happens to be appropriate place.

10. Reliance is placed upon the following judgments:

- (i) *Arun Kumar v. Union of India* (2207) SCC 732);
- (ii) *Union of India v. Dudh Nath Prasad* (2000 (2) SCC 20);
- (iii) *Bhagwan Dass v. Kamal Abrol*, (2005) 11 SCC 66);
- (iv) *National Insurance Co., Ltd. v. Mastan* (2006 (2) SCC 641);
- (v) *P.R.Dshpandu v. Maruti Balaram Haibatti* (1998 (6) SCC 507);
- (vi) *State of Punjab v. Sarabdeep Singh Virk & Others* (2009 SCC Online Bombay 240);
- (vii) *Virendra Kumar Verma v. Union of India & Others*.

11. Shri Vikas Singh, learned Senior Counsel, appeared for the respondent. He submits that the place of residence of an employee, whether in service or after retirement, happens to be a deciding factor in choosing the forum, and the respondent filed the OA before the Chandigarh Bench in view of the fact that he is now residing in Gurugram within the

State of Haryana. He submits that filing of the Writ Petition before the Hon'ble High Court of Delhi and Hon'ble Supreme Court, was at a time when the applicant was residing in the official accommodation in Ashoka Road, and once he was issued a notice of eviction, he has shifted his residence to Gurugram.

12. The learned Senior Counsel further submits that the applicants herein have already raised a preliminary objection before the Chandigarh Bench regarding the territorial jurisdiction and even before the objection was dealt with, the present PT is filed. He submits that Rule 6 of the Central Administrative Tribunal (Procedure) Rules, is worded in such a way that there is no scope to insist on a permanent residence or the one of very long duration, and what is essential is, the place at which the employee is residing at the relevant point of time. He submits that the Government of India has its establishments and law officers before every Bench of the Tribunal and there should not be any difficulty for them to defend the OA before the Chandigarh Bench. He further submits that the gist of the entire record can be presented in the counter affidavit and as long as no trial is taking place, the mere presence of record at Delhi, would not make much difference.

13. Another contention of the learned Senior Counsel is that the Hon'ble Supreme Court stipulated four months time for the disposal of the OA

and since the hearing is taking place through video conferencing in the Tribunal also, the place of the Bench hardly matters. He placed reliance upon the judgment of the Hon'ble Supreme Court in *Ruchi Majoo v. Sanjev Majoo* (2011 (6) SCC 479), and certain other precedents.

14. The respondent is an IRS Officer. It appears that he faced certain disciplinary proceedings and that ensued in quite a voluminous litigation. The appointing authority of the respondent passed an order dated 10.06.2019, compulsorily retiring him under F.R.56 (J). Challenging the order of compulsory retirement, initially he filed a Writ Petition before the Hon'ble High Court of Delhi, under Article 226 of the Constitution of India, on 28.08.2019. It is stated to have been dismissed. Thereupon, he filed SLP before the Hon'ble Supreme Court, challenging the order of the Hon'ble High Court and simultaneously filed a Writ Petition 1255 of 2019 under Article 32 of the Constitution of India. Through a common order in the SLP as well as Writ Petition, the Hon'ble Supreme Court declined to interfere with the order of compulsory retirement and left it open to the applicant to file an OA before the Tribunal.

15. Whatever may have been the circumstances under which the applicant filed the SLP before the Hon'ble Supreme Court, the filing of Writ Petition under Article 226 of the Constitution of India before the Hon'ble High Court of Delhi, as on 28.08.2019, discloses that the proper forum to assail the proceedings, according to him, is the one, at Delhi. The only

basis for the respondent to file the OA before the Chandigarh Bench was that he shifted his residence to Gurugram.

16. Rule 6 of the CAT (Procedure) Rules 1987, become relevant in this behalf. It reads as under:

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 under Section 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.

From this, it becomes clear that in the context of institution of proceedings by a person, who ceased to be in service by reason of

retirement, dismissal or termination, the place where he is “ordinarily residing at the time of filing of the application” becomes relevant.

17. The expression “ordinarily residing” was the subject matter of the interpretation in various judgments rendered by the Hon’ble Supreme Court, the High Courts and this Tribunal. The starting point on this behalf can be interpretation of similar expression, occurring in Article 5 (c) of the Constitution of India. In *Virendra Kumar Verma’s* case, it was explained that an occasional or incidental residence would not fit into phrase. Reference was also made to the concept of domicile.

18. In *Bhagwan Dass’* case, it was observed that the residence must be for a considerable period of time, as distinguished from a casual or a occasional residence. Same view was expressed in other judgments referred to above.

19. Apart from the various contentions advanced, during the course of arguments, it emerges that the applicant was residing in the official accommodation till recently and shifting to Gurugram, is of a very recent origin. Things would have been different altogether, had it been a case where the applicant has his domicile or permanent residence and he settled there, after compulsory retirement or that he was serving in a office within the jurisdiction of the Chandigarh Bench, before the order impugned in the OA was passed.

20. The mere shifting of residence to Gurugram, that too, just before the filing of the OA even while the eviction from the official accommodation is the subject matter of certain proceedings; hardly constitutes the basis for filing of the OA before the Chandigarh Bench.

21. More than all the factors referred to above, judicial notice can be taken of the fact that the employees who are working in the places like Gurugram, Faridabad, Karnal, in the State of Haryana, approach the Tribunal by filing PTs with a prayer to permit them to file the OAs before the Principal Bench. Similarly, the employees whether serving or retired, residing in places like Gaziabad, Muradabad, Agra, Merut, Mathura, file the PTs seeking permission to file OAs before Principal Bench. In all such cases, the only reason stated is about the distance factor, and they contend that it would be convenient for them as well as the respondents to pursue the proceedings before the Principal Bench than before the Chandigarh Bench or Allahabad Bench, as the case may be. Notwithstanding, the small inconvenience that may be caused to the respondents on account of filing of the OA, before the Principal Bench, the PTs are allowed and permission is accorded. Such PTs constitute nearly 3 1/4th of the matters of that category.

22. In the instant case, not only the applicant is residing within the National Capital Territory of Delhi, but also his entire service record is in Delhi. Even for the applicant, it would be difficult to travel all the way to Chandigarh, to pursue the proceedings. He has already instituted proceedings before the Hon'ble High Court of Delhi and the Hon'ble Supreme Court and he felt it very much convenient. Same situation obtains, in the context of OA also. The Principal Bench would be better suited. Shifting of residence by few kilometers from the earlier residence of the applicant would not justify filing of the OA at a distance of about 250 kilometers away.

23. Another important factor, which is on the administrative side, is that the Hon'ble Judicial Member, Chandigarh Bench, is due to retire by the end of this month and it would be difficult to comply with the directions issued by the Hon'ble supreme Court as regards the disposal of the OA.

24. For the foregoing reasons, the PT is allowed and the OA.No.746/2020 pending before the Chandigarh Bench is transferred to Principal Bench. In view of the specific direction issued by the Hon'ble Supreme Court, it is directed that the record shall be transmitted within one week and the Registry shall take necessary steps in this behalf.

25. The OA shall be listed for hearing and for appearance of the parties before the Principal Bench on 20.11.2020.

(JUSTICE L.NARASIMHA REDDY)
Chairman

DSN/RKS