

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 1st day of September 2003.

Original Application no. 295 of 2002.

Hon'ble Maj Gen K.K. Srivastava, Member A
Hon'ble Mr. A.K. Bhatnagar, Member J

Yogesh Kumar Sharma, S/o Sri Churamani Sharma,
R/o C/o S.C. Agarwal, R/o Vill and Post Navjhil,
Distt. Mathura.

... Applicant

By Adv : Sri M.K. Nigam

Versus

1. Railway Recruitment Board, Trivendrum (State of Kerala),
through its Chairman.
2. The Chairman, Railway Recruitment Board,
Trivendrum (State of Kerala).
3. Union of India through General Manager,
Southern Railway, Trivendrum.

... Respondents

By Adv : Sri A.K. Gaur

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed Under Section 19 of the A.T. Act, 1985, the applicant has sought following reliefs:-

- " a. That this Hon'ble Court may graciously be pleased to quash the order dated 31.10.2001 passed by the respondent no. 2 (annexure No. 1 of the Compilation-I).
- b. That the Hon'ble Tribunal may be pleased to direct the Railway Recruitment Board, Trivendrum to get the photograph of the petitioner certified from any Forensic Laboratory in India.
- c.
- d."

2. The grievance of the applicant is that by order dated 31.10.2001, respondent no. 2 i.e. Chairman Railway Recruitment
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Board Trivandrum has cancelled the candidature of the applicant for appointment on the post of skilled artisan (Electrical Engineer).

3. The facts, in short, are that the Railway Recruitment Board (in short RRB) Trivandrum published a notification dated 2.6.2002 in the Employment News Paper dated 3-9.6.2003 calling for applications for the post of skilled artisan. The applicant applied for the same. He was called for examination held on 11.2.2001 at Trivandrum and was declared provisionally qualified to be considered for being placed on the panel for appointment in Southern Railway. However, by impugned order dated 31.10.2001 his candidature for the post of skilled artisan (Electrical) has been cancelled. Aggrieved by the same, the applicant, who is a resident of Distt. Mathura, has filed this OA.

4. We have heard learned counsel for the parties at length on the point of jurisdiction as well as merits of the case.

5. Sri M.K. Nigam, learned counsel for the applicant submitted that the OA is maintainable before this Tribunal as per provision of Rule 6 (ii) of CAT (Procedure) Rules 1987 because part of cause of action has arisen at Mathura, where the order was served on the applicant. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of Naveen Chandra Vs. State of Maharashtra, 2000 (6) SCC 640 and also the judgment in case of State of MP Vs. B.D. Mishra, 1986 AWC 295.

6. Arguing on the maintainability of this OA before this Tribunal, Sri A.K. Gaur, learned counsel for the

respondents submitted that the OA is liable to be dismissed on the ground of territorial jurisdiction, as no part of cause of action has arisen within the territorial jurisdiction of this Tribunal. It is not a case of retirement, dismissal, removal or compulsory retirement, but it is a case of fresh selection by the RRB Trivandrum. Learned counsel for the respondents has placed reliance on the following judgments :-

- i. K Balaji Vs. Integral Coach Factory (Bangalore Bench), 2003 (2) AISLJ 130.
- ii. Daya Shanker Bharadwaj Vs. Chief of the Army Staff, AIR 1988 (ALLD) 36.
- iii. Rakesh Dhar Tripathi Vs. Union of India & Ors, AIR 1988 (ALLD) 47.
- iv. Oil and Natural Gas Corporation Vs. Utpal Kumar Basu, 1994 (4) SCC 711.

7. Before we consider merits of the case, we feel it necessary to consider the maintainability of the OA before this Tribunal. The respondent's counsel has cited various judgments on this point. Bangalore Bench of this Tribunal in case of K Balaji (^{law}supra) has held as under :-

"In view of the ^{law}laid down by the Hon'ble Supreme Court as well as the Hon'ble High Court, mere sending an application from Bangalore to Chennai for appointment and receiving the order from Chennai are so trivial that they cannot be treated as constituting a part of cause of action. Therefore, in our considered opinion this application is not maintainable. Accordingly we pass the order as under."

The Hon'ble Allahabad High Court in case of Daya Shanker Bharadwaj (supra) has held that cause of action arises by action of government or authority and not by the residence of person aggrieved. The Hon'ble Allahabad High Court in para 4 has held as under :-

"A right of action is the right to endorce a cause of
.....4/-

action. A person residing anywhere in the country being aggrieved by an order of government Central or State or authority or person may have a right of action at law but it can be enforced only in the jurisdiction under Art. 226 can be invoked of that High Court only within whose territorial limits the cause of action wholly or in part arises. The cause of the government or authority and not by residence of the person aggrieved."

In another case of Rakesh Dhar Tripathi (supra) the Hon'ble Allahabad High Court has held as under:-

"Where the petitioner filed a petition in Allahabad High Court but on the grounds on which the reliefs were claimed did not show that the cause of action arose in Allahabad and by whatever the petitioner was aggrieved, took place in New Delhi and all the respondents were also residents of New Delhi, then the fact of the petitioner's residence in Allahabad being not having the remotest relevance for deciding whether the cause of action wholly or partly, arose within the territorial limits of the Allahabad High Court for entertainment of the writ petition, the said fact could not entitle him to get the relief. In the circumstances of the case "cause of action" must be read as "cause of proceeding" which occurred in New Delhi."

The Hon'ble Supreme Court in case of Oil and Natural Gas Commission (supra) has held as under :-

"Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercise jurisdiction, notwithstanding that seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection

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of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.

Chand Kour Vs. Partab Singh, ILR (1889) 16 Cal 98 : 15 IA 156, relied on

In the present case even if the averments in the writ petition are taken as true it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work not to be carried out at Hazira in Gujarat. Therefore, merely because NICCO read the advertisement at Calcutta, submitted the offer from Calcutta, made representations from Calcutta and sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute facts forming an integral part of the cause of action.

Subodh Kumar Gupta Vs Shrikant Gupta, (1993) 4 SCC 1; State of Rajasthan V. Swaika Properties, (1985) 3 SCC 217, relied on

Election Commission V Saka Venkata Subba Rao, 1953 SCR 1144 : AIR 1953 SC 210; R Bejal V Triveni Structurals Ltd., 1987 Supp SCC 279, referred to."

8. On perusal of the above judgments of the Superior Courts leaves no doubt in our mind that in the present case mere communication does not create any cause of action merely on the ground that the applicant is a resident of Mathura and communication was delivered to him at his residence at Mathura. The appropriate forum in this case is the Trivandrum Bench of this Tribunal.

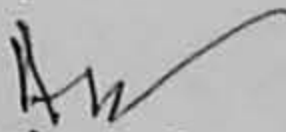


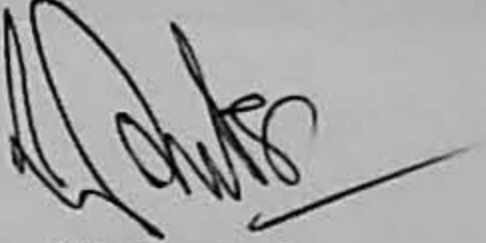
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9. In view of the above the OA is dismissed as not maintainable before this Tribunal. However, liberty is given to the applicant to raise^h the said issue before appropriate forum.

10. There shall be no order as to costs.


Member J


Member A

/pc/