

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 210 of 2007

Thursday, this the 26th day of April, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

K.R. Renjith Babu,
S/o. K.K. Ramakrishnan,
Assistant Loco Pilot/Electrical/
East Coast Railways, Bachell RS,
Dantewada District, Chattisgarh State,
Permanent Address: Kallarackal House,
Plzhala P.O., Kochi - 682 027

.... **Applicant.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. The Divisional Railway Manager,
Southern Railway, Palghat Division,
PALGHAT
2. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
CHENNAI - 3
3. The General Manager,
East Coast Railway, Chandrasekharpur,
BHUBANESWAR
4. The Senior Divisional Electrical Engineer (OP),
East Coast Railway, Waltair Division, WALTAIR
5. The Senior Divisional Personnel Officer,
East Coast Railway, Waltair Division, WALTAIR
6. Shri Deepak Kumar, Assistant Loco Pilot (AC),
Office of the Chief Crew Controller,
Southern Railway, ERODE

.... **Respondents.**

(By Advocate Ms. P.K. Nandini)

[Signature]

The Original Application having been heard on 17.04.07, this Tribunal on 26.04.07 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, presently working at Bacheli Railway Station (Chhatisgarh State) of the East Coast Railway as an Assistant Loco Pilot/Electrical and who has, along with Respondent No. 6, working as Assistant Loco Pilot/AC at Erode (Tamil Nadu), Southern Railways, applied for mutual transfer, has approached the Ernakulam Bench of the Tribunal for a direction to the Divisional Railway Manager Palghat to process the mutual application form. Annexure A-1 is a mutual transfer application form addressed to the General Manager, Rail Vihar, Chandrasekharpur, Bhubaneswar (Orissa). Annexure A-2 is a mutual Transfer application form addressed to the General Manager, Southern Railways, Madras (Tamil Nadu). Annexure A-3 is a communication dated 8th December, 2006 from the Office of the Sr. D.E.E. East Coast Railway, Vishakhapatnam, A.P. But the applicant's prayer is for a direction to the DRM, Southern Railway inter alia to "act upon Annexure A1 and A2 consent given by the 6th respondent and to pass appropriate favourable orders thereon, forthwith."

2. Respondents' counsel, at the time of admission hearing, vehemently objected to entertainment of the OA on the ground that this Tribunal lacks territorial jurisdiction to deal with the case. Hence, before going into the merits of the case, the question of jurisdiction was to be dealt with and the counsel for the parties had been heard in this regard.

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3. Counsel for the applicant submitted that jurisdiction is based on relief sought and the relief sought is as under:-

- (I) Declare that the 1st respondent is bound to act upon the mutual consent given by the 6th respondent in Annexure A-1 and A2 for an Inter-Railway Transfer with the applicant and declare further that action of the 1st respondent in refusing to act upon the same is arbitrary, discriminatory and unconstitutional;
- (II) Declare that the action of the 1st respondent in the matter of mutual consent for transfer given by the 6th respondent with one Shri Krishna Murthy of Secunderabad Division is clearly arbitrary, contrary to law and unconstitutional.
- (III) Direct the 1st respondent to act upon Annexure A1 and A2 consent given by the 6th respondent and to pass appropriate favourable orders thereon, forthwith;
- (IV) Award costs of and incidental to this application;
- (V) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

4. Counsel for the applicant further submitted that for deciding the territorial jurisdiction, mere averment in the O.A. is sufficient and objection of the defendant is of least consequence.

5. It has further been argued that cause of action, even if partly arises in a particular place, the same would suffice to have the territorial jurisdiction and in the instant case since the 6th Respondent's DRM is at Palghat (Kerala), and the applications are to be routed through the DRM, this Tribunal has jurisdiction to deal with the case. It has also been argued that it is the choice of the applicant to choose the Bench, when the cause of action arises at more than one place,

[Signature]

and each place comes under different Bench.

6. The counsel for the applicant relied upon the following decisions:-

(a) *Rajasthan High Court Advocates' Assn. v. Union of India, (2001)*

2 SCC 294 = AIR 2001 SC 416 with particular reference to paragraph 15 to 17 thereof which are as under:-

15. The expression similar to the one in respect of cases arising in the districts of as used in para 2 of the Presidential Order came up for the consideration of a four-Judge Bench of this Court in Nasiruddin v. STAT. It was in the context of division of territorial jurisdiction between Allahabad and Lucknow Benches in Uttar Pradesh. This Court held:

The expression cause of action in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression cause of action is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the

alleged cause of action .

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The expression cause of action with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad.

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Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of Oudh or part of the cause of action arose at a place outside the specified Oudh areas.(underlining by us)

16 . *The abovesaid view of the law has been reiterated by this Court recently in U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P.*

17 . *The expression cause of action has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in cause of action. It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases. The permanent Bench at Jaipur has been established by the Presidential Order issued under sub-section (2) of Section 51 of the Act. The territorial jurisdiction of the permanent Bench at Jaipur is to be exercised in respect of the cases arising in the*

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specified districts. Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence to hear by reference to territory bifurcated between the principal seat and the Bench seat, shall be an issue to be decided in an individual case by the Judge or Judges hearing the matter if a question may arise in that regard. The impugned explanation appended to the order of the Chief Justice dated 23-12-1976 runs counter to the Presidential Order and in a sense it is an inroad into the jurisdiction of the Judges hearing a particular case or cases, pre-empting a decision to be given in the facts of individual case whether it can be said to have arisen in the territory of a particular district. The High Court is right in taking the view which it has done.

(b) **Sanwaramal Kejriwal v. Vishwa Coop. Housing Society Ltd., (1990) 2 SCC 288** wherein the Apex Court has held as under:

24. But the jurisdiction of the court in which the action is originated must be determined on the averments in the plaint or claim application and not on the defence taken by the adversary party. For example, if the plaintiff goes to court alleging that the defendant is a trespasser, the ordinary court will have jurisdiction and its jurisdiction will not be taken away merely because the defendant pleads tenancy. If, however, the defendant succeeds in proving that he is a tenant in respect of premises, possession whereof is sought, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact that the defendant was a trespasser. Here also the claim was lodged by the society in the Co-operative Court on the ground that the appellant was in wrongful occupation of the flat in question and was a mere trespasser. On facts it is now found that the appellant was and is a protected tenant under Section 15-A of the Rent Act. The proceedings initiated under Section 91(1) of the Societies Act cannot, in the circumstances, succeed for the simple reason that the society has failed to prove the fact which constitutes the foundation for jurisdiction. If the society fails to prove that the appellant has no right to the occupation of the flat since he is a mere trespasser, the suit must obviously fail. That is why even in the case of Hindustan Petroleum Corporation Limited 2 this Court did not consider it necessary to deal with the contention based on Section 91(1) of the Societies Act in detail and felt content by observing that the point stood covered by the decision in Bhatnagar case.



(c) *Abdulla Bin Ali v. Galappa, (1985) 2 SCC 54 ,*

"5. There is no denying the fact that the allegations made in plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the civil court and not in the Revenue Court. The High Court, however, took the view that the plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant."

(d) *AIR 2007 Delhi 27 Para 6 -*

7. Per contra, counsel for the respondents submitted that there is no territorial jurisdiction of this Bench in view of the fact that the applications have been addressed only to the respective General Manager who are the authority competent to finalize the transfer and these functionaries are not positioned at Kerala; that the applicant is serving at Bachell Railway Station in the State of Chattisgarh; that the sixth respondent is functioning at Erode, Tamil Nadu; There is no iota of evidence to show that the applications have been submitted to the DRM Palghat. Again, vide Annexure A-3, the applicant had been informed that his application had been referred to the Chief Personnel Officer of the East Coast Railways. Thus, this is a clear abuse of the process of the Court and hence, the OA should be dismissed. It has also been argued by the counsel for the respondents that there is no order rejecting the case of the applicant and hence, even assuming without accepting that this Bench has the territorial

Jurisdiction to try this OA, the application is too pre-mature.

8. Arguments were heard and documents perused. In so far as Administrative Tribunals Act, 1985 is concerned, territorial jurisdiction of the Tribunal is as per the provisions contained in Rule 6 of the C.A.T. (Procedure) Rules, 1986, and the same is 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."

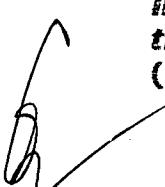
9. Admittedly, the applicant is not working within the area of jurisdiction of this Bench. As such, if only there be any cause of action either in full or in part that has taken place, it is then that the applicant could claim territorial jurisdiction of this Bench. Of the six respondents arrayed in the OA, it is only the office of first respondent i.e. DRM Palghat that comes within the jurisdiction of this Tribunal. There is no reference to any communication addressed to the DRM Palghat either from the applicant or from the sixth respondent. The authority competent to decide the application of the applicant and the sixth

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respondent is only the General Manager of the two Railways and DRM Palghat has absolutely no say in the matter. The DRM, even if he would have received the applications (in respect of which there is absolutely no inkling), is not the deciding authority and the applicant's prayer is for a direction to this respondent to pass 'favourable orders' forthwith.

10. From the perusal of the OA it is evident that to the knowledge of the applicant, there is no role for the DRM in the matter. Yet he has chosen to seek relief against respondent purely to have a jurisdiction of this Bench for reasons best known to him. There is absolutely no evidence - not even remote- in respect of the allegations made in para 4(e) of the O.A. The Tribunal is under a legal obligation to give thorough reading of the OA - not formal but meaningful - to ascertain whether it enjoys the jurisdiction to deal with the case. In this regard, support could well be taken from the decision of the Apex Court in the case of **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467**, wherein the Apex Court has given sufficient caution to the Trial court in entertaining any case. The Apex Court has held as under:-

"The learned Munsif must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. (Emphasis supplied)."



11. Cause of action is said to have arisen at that place where the ultimate authority decides the claim of the individual. In this regard, it is appropriate to refer to the decision of the Apex Court in the case of **ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711** wherein the Apex Court has stated:-

"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 was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. (Emphasis supplied)."

12. Assuming without accepting that there is some cause of action, even then, the Court has inherent power not to entertain on the basis of the doctrine of convenience. In this regard, reference could be made to the decision of the Apex Court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254**, wherein the Apex Court has held as under:-

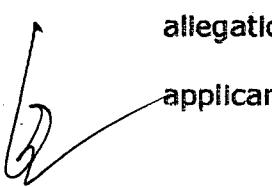
30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney AIR 1941 Cal 670*, *Madanlal Jalan v. Madanlal (1945) 49 CWN 357*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. 1997 CWN 122*, *S.S. Jain & Co. v. Union of India (1994) 1 CHN 445* and *New Horizons Ltd. v. Union*



of India AIR 1994 Del 126.] (Emphasis supplied).

13. Decisions cited by the counsel for the applicant by and large deal with the subject matter jurisdiction. As such, these are not of that much use to the applicant. In fact, the one relied upon vide para 6(a) above, goes in favour of the respondents as could be seen from the observation therein i.e. *The territorial jurisdiction of the permanent Bench at Jaipur is to be exercised in respect of the cases arising in the specified districts. Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence to hear by reference to territory bifurcated between the principal seat and the Bench seat, shall be an issue to be decided in an individual case by the Judge or Judges hearing the matter if a question may arise in that regard.*

14. The applicant is not remissless. He could well approach the appropriate Forum of the Tribunal where the real cause of action has arisen. He had, fully knowing the fact that this Bench does not have the jurisdiction to deal with the case, has filed before this Bench. In order to bring in the case within the territorial jurisdiction, he had chosen to give the "permanent address" of the applicant which is not provided for in Rule 6. In order to bring the case within the jurisdiction of the Tribunal, he has made certain allegations against Respondent No. 1 despite the fact that there is absolutely no proof over the allegation nor is there any correspondence with this respondent, of the applicant's request for mutual transfer. The OA has to be, as per the dictum of



the Apex Court in the case of T. Arivandandam (supra) has to be nipped at its bud.

15. The OA is therefore, dismissed due to want of jurisdiction. However, It is pointed out that in case the applicant moves the proper Bench having territorial jurisdiction to entertain this OA, the time consumed by the applicant in this Tribunal would be discounted while considering the aspect of limitation.

16. Though there is full justification to levy cost in this matter, we take a lenient view and do not saddle the applicant with any cost.

(Dated, the 26th April, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



Sathi Nair
VICE CHAIRMAN

CVR.