

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

OA No.545 /2005

Date of decision: 01.12.2005

Jitendra Kumar Mittal - Applicant

Mr. Vikrant Gupta - Advocate for the applicant(s)


Versus

Union of India and Ors. - Respondents

CORAM:

The Hon'ble Mr. M.L.CHAUHAN, MEMBER (JUDICIAL)

1. Whether Reporters of local papers may be allowed to see the Judgment ? *NO.*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordship wish to see the fair copy of the Judgment ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes.*


(M.L.CHAUHAN)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of December, 2005

ORIGINAL APPLICATION No 545/2005.

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Jitendra Kumar Mittal
s/o Shri Bhagwan Sahai Mittal,
aged about 36 years,
presently residing at III/67,
GSI Colony,
Malviya Nagar,
Jaipur.

.. Applicant

(By Advocate: Mr. Vikrant Gupta)

Versus

1. Union of India through
its Secretary, Ministry of Personnel
and P.G. and Pensions,
Department of Personnel and Training,
Government of India,
Block No.12,
CGO Complex,
Lodhi Road,
New Delhi.
2. The Staff Selection Commission
through its Chairman,
Department of Personnel and Training,
Government of India,
Block No. 12,
CGO Complex,
Lodhi Road,
New Delhi.
3. The Regional Director (Northern Region)
Staff Selection Commission,
Block No.12,

CGO Complex,
Lodhi Road,
New Delhi.

4. The Under Secretary (Northern Region)
Staff Selection Commission
(Examination II Section),
Block No.12,
CGO Complex,
Lodhi Road,
New Delhi.
5. The Assistant Director (Northern Region)
Staff Selection Commission,
Block No.12,
CGO Complex,
New Delhi.

.. Respondents

O R D E R (ORAL)

In this case the applicant has challenged the memorandum dated 6.4.2005 (Ann.A1) passed by respondent No.4 i.e. the Under Secretary (Northern Region), Staff Selection Commission, Block No.12, CGO Complex, New Delhi whereby representation of the applicant dated 1.2.2005 was rejected and he was communicated that request for change of service/post cannot be acceded at this stage. When the matter was taken up for admission, the learned counsel for the applicant was apprised to address this Tribunal as to how this Tribunal has got territorial jurisdiction to entertain this matter. Accordingly the matter was heard at admission stage.

2. Before noticing the contention raised by the learned counsel for the applicant, it will be useful to notice few relevant facts which are not in dispute. The Staff Selection Commissioner (hereinafter referred to as SSC) issued advertisement for Combined Graduate Level (Preliminary) Examination, 2003 which was published in Employment News dated 25-31 January, 2003 for various posts including Assistant grades, Inspector of Central Excise, Income Tax, Preventive Officers in Custom Houses, Assistant Enforcement Officer, Sub-Inspector, Central Bureau of Investigation etc. Pursuant to such advertisement the applicant being eligible for appearing in the aforesaid examination submitted his application. He was allotted Roll No. 1713531. The preliminary examination was held on 11.5.2003. Result of the examination was declared on 12.7.2003 in which the applicant was declared pass. The applicant has submitted his first preference for the post of Sub-Inspector in Central Bureau of Investigation (CBI) and second preference for Inspector in Central Excise. Thereafter another advertisement was issued by the SSC for Combined Graduate Level (Main) Examination, 2003 and persons who have qualified the preliminary examination were eligible to appear in the said examination. Consequently, the applicant also appeared in the Main Examination and final result of the examination was published in Employment News dated 19-

25 July, 2005 in which the applicant declared pass. It is stated that name of the applicant was shown at Sl.No.12 in the category of post of Sub-Inspector, CBI. As per merit list prepared by the SSC, the applicant's rank was No.4 in the merit list of Sub-Inspector in CBI. It is further stated that initially call letter was received from respondent No.5 i.e. Assistant Director (Northern Region), SSC, New Delhi to the effect that the applicant has qualified in the final result under Scheme-A for appointment to the post of Inspector, Central Excise and he was directed to visit office of respondent No.5 before 25.1.2005 for updation of the record alongwith certificate/documents. However, the said letter was subsequently superseded vide another letter dated January, 27, 2005 whereby it was intimated that the applicant had qualified for appointment to the post of Sub-Inspector, CBI in place of Inspector in Central Excise and a typographical error has crept in the letter dated 13.1.2005 whereby intimation was given to the effect that the applicant has qualified for appointment for the post of Inspector. It is case of the applicant that as per advertisement minimum height for appointment to the post of Sub-Inspector in CBI is 165 cms. whereas it is 157.5 cms. for appointment to the post of Inspector in Central Excise. The height of the applicant is only 163 cms. As such, he could not be appointed to the post of Sub-Inspector in CBI due

to sub-standard height. Under these circumstances, the applicant submitted representation dated 1.2.2005 to respondent No.3 thereby requesting to reconsider the category allotted to the applicant and assign him next category in order of preference. This was followed by reminder dated 25.2.2005 and 6.4.2005. Pursuant to representation dated 1.2.2005, the respondents vide impugned order dated 6.4.2005 (Ann.A1) intimated that since the applicant has been selected as Sub-Inspector in CBI on the basis of his own option/order of preference-cum-merit position, there is no case for any representation for change of preference at this stage. It is this order which is under challenge before this Tribunal.

3. From the material placed on record, it is clear that advertisement as well as selection process were conducted by the authorities at Delhi i.e. outside the territorial jurisdiction of this Tribunal and person selected has to be offered appointment not within the territorial jurisdiction of this Tribunal. Even the impugned order was also passed by the Under Secretary (NR), SSC, New Delhi. It is also apparent from the memo of parties that the applicant has impleaded as many as 5 respondents whose offices are situated at New Delhi. Thus, the cause of action wholly or partly in this case has arisen outside the territorial jurisdiction of this Tribunal. Thus, I am of the view

that this Tribunal has got no jurisdiction to entertain this OA in view of the provisions contained in Section 19(1) of the Administrative Tribunals Act, 1985 read with Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987. On the contrary, the learned counsel for the applicant while drawing my attention to the impugned order dated 6.4.2005 (Ann.A1) letter dated 13.1.2005 (Ann.A6) and letter dated January 27, 2005 has argued that no doubt the said orders have been passed by the authorities outside the territorial jurisdiction of this Tribunal but the same were addressed to the applicant at Jaipur address where the applicant received such communications. As such, this Tribunal has got territorial jurisdiction to decide this matter. For that purpose, the learned counsel for the applicant has placed reliance on two decisions of the Hon'ble Rajasthan High court in the case of Balu Singh vs. Union of India and others, 1996 (1) WLC (Raj) 699 and Mohan Singh vs. Union of India and anr., 2001 (4) WLC (Raj) 41.

4. At the outset, it may stated that in the case of Mohan Singh (supra) the Hon'ble High Court after considering scope of Article 226 of the Constitution of India and also Section 20 of the Code of Civil Procedure held that the question of territorial jurisdiction will have to be answered in the light of

case. In the instant case the applicant has prayed that he may be given appointment in accordance with second preference given by him to the post of Inspector in Central Excise as admittedly the applicant who has exercised his first preference to the post of Sub-Inspector in CBI did not fulfill the eligibility condition as prescribed in the notice and as such he should have not exercised option for the said post and he was expected to be fully aware of the eligibility condition as advertised in the advertisement. Thus, the case of the applicant does not fall within the four corners of the explanation No. III as enumerated under Section 20 of the Code of Civil Procedure, 1908, even if it is held that provision of Section 20 of the Code of Civil Procedure is applicable in the instant case which according to me, is not attracted in the instant case, in view of the specific provisions contained under Section 19 of the Administrative Tribunals Act, 1985 read with Rule 6(2) of the CAT (Procedure) Rules.

5. So far as case of Balu Singh (supra) is concerned, the same is also not applicable in the facts and circumstances of this case. That was also a case where payment of pension to the petitioner retired from 10th Bn. Rajputana Rifles was dismissed by the learned Single Judge for want of jurisdiction of Rajasthan High Court. The learned Single Judge

dismissed the writ petition on the ground that all the respondents reside outside the jurisdiction of the High Court and no cause of action has arisen within the jurisdiction of the High Court. Against dismissal of writ petition, DB writ petition was filed and it was held that the appellant was recruited in Rajasthan, pension, if payable, was to be paid in Rajasthan and refusal to pay pension was also communicated within the jurisdiction of this Court, then, irrespective of the fact that the respondents do not reside within the jurisdiction of this Court, the writ petition can be entertained by this Court as a part of cause of action has accrued here. Thus, from the facts as stated above, it is clear that appellant before the Hon'ble High Court was recruited in Rajasthan, he was entitled to receive pension in Rajasthan and if refusal of payment of pension was communicated in Rajasthan, then there is jurisdiction of the High Court. Under these circumstances, the Hon'ble High Court has held that part of the cause of action has arisen within the jurisdiction of the High Court. Same is not the case here. In the instant case, the advertisement was issued by the respondents outside the jurisdiction of this Tribunal. Pursuant to such advertisement, the applicant submitted his application and selection process was completed and result was declared outside the territorial jurisdiction of this Tribunal. The applicant was also

informed about declaration of result and also to appear before the authorities outside the jurisdiction of this Tribunal. The applicant was also informed about refusal regarding change of his option/order of preference-cum-merit position by the authorities outside the jurisdiction of this Tribunal. As such, simply because the applicant has submitted application from Jaipur and he has received communication at Jaipur cannot constitute a part cause of action.

6. That apart, as per provisions contained under Section 19(i) of the Administrative Tribunals Act, 1985 person aggrieved can maintain the application before this Tribunal within whose jurisdiction the order is passed and he is aggrieved of it. Admittedly, the order against which the applicant is aggrieved has been passed by the respondents at Delhi i.e. outside the jurisdiction of this Tribunal. As already stated above, all the respondent Nos. 1 to 5, who passed the order and who took steps for issuing advertisement and completing the selection process are situated/residing at Delhi. Therefore, for the impugned order which is passed in Delhi, this Tribunal would not have territorial jurisdiction in view of the clear mandate of Section 19 of the Administrative Tribunals Act.

7. At this stage, it may also be relevant to notice the scope of entertainment of petition on account of

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principle 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....."

According to Section 19(i) of the Administrative Tribunals Act, the aggrieved person can maintain an application before the Tribunal within whose jurisdiction the order is passed and is aggrieved of it. This Section specifically does not provide that this Tribunal has jurisdiction regarding the order passed outside the State to entertain an application in terms of Section 19(i) of the Administrative Tribunals Act as is mandated under Article 226 (2) of the Constitution of India. The place where the impugned order was passed should be within the jurisdiction of this Tribunal and normally the place of the order is the place where the respondent who passed the order, is situated or resides. Therefore, in my opinion, the order is being passed in Delhi, this Tribunal would not have any jurisdiction in view of the mandate of Section 19(i) of the Administrative Tribunals Act. On the contrary, as already stated above, the scope of Article 226 is wide enough and the Hon'ble High Court can exercise jurisdiction in relation to the territory within which the cause of action wholly or in part has arisen. For exercise of such powers mere residence of the person does not confer jurisdiction unless the cause of action or part

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7. At this stage, it may also be relevant to notice the scope of entertainment of petition on account of

territorial jurisdiction by the Hon'ble High Court under Article 226 (2) of the Constitution of India vis-à-vis scope of entertainment of such application by this Tribunal under Section 19(1) of the Administrative Tribunals Act. As already stated, the judgments relied upon by the learned counsel for the applicant relates to power and scope of the Hon'ble High Court to entertain the petition under Article 226 of the Constitution of India read with Section 20 of the Code of Civil Procedure. However, in none of these judgments, the scope of Section 19(i) of the Administrative Tribunals Act, 1985 was under consideration. Thus, the aforesaid judgments relied upon by the learned counsel for the applicant is not applicable in the facts and circumstances of this case. At this stage, it will be useful to quote Article 226 (2) of the Constitution of India, which read as under:-

"226(2): The power conferred by clause (1) to issue directions, orders or Writs to any Government Authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

From reading of the above Article, it is clear that Article 226 clause (2) was specifically amended by the Constitution (Fifteenth Amendment) Act, 1963 and by the Constitution (Forty Second Amendment) Act, 1976 so as to enlarge jurisdiction of the High Court.

Hence, it can exercise jurisdiction even regarding the authorities notwithstanding the fact that seat of such Government authority is not within those territories, as notified for the concerned high Court. But similar provision is not found under the Administrative Tribunals Act, 1985, as is clear from the following Paras.

8. Now let me notice the relevant provisions of the Administrative Tribunals Act, 1985 and Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987. Section 19(1) of the Administrative Tribunals Act reads as follows:-

“19. Applications to Tribunals.-(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation- For the purpose of this sub-section ‘order’ means an order made-

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).

(2).....”

Similarly, Rule 6 of the CAT (Procedure) Rules is in the following terms:-

“6. Place of filing applications.-(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-

(i).....

(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 Principle 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.

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According to Section 19(i) of the Administrative Tribunals Act, the aggrieved person can maintain an application before the Tribunal within whose jurisdiction the order is passed and is aggrieved of it. This Section specifically does not provide that this Tribunal has jurisdiction regarding the order passed outside the State to entertain an application in terms of Section 19(i) of the Administrative Tribunals Act as is mandated under Article 226 (2) of the Constitution of India. The place where the impugned order was passed should be within the jurisdiction of this Tribunal and normally the place of the order is the place where the respondent who passed the order, is situated or resides. Therefore, in my opinion, the order is being passed in Delhi, this Tribunal would not have any jurisdiction in view of the mandate of Section 19(i) of the Administrative Tribunals Act. On the contrary, as already stated above, the scope of Article 226 is wide enough and the Hon'ble High Court can exercise jurisdiction in relation to the territory within which the cause of action wholly or in part has arisen. For exercise of such powers mere residence of the person does not confer jurisdiction unless the cause of action or part


of cause of action arose within the jurisdiction of the Tribunal, which is not the case before this Tribunal in view of clear mandate of Section 19 of the Administrative Tribunal Act. It is no doubt true that Rule 6 of the CAT (Procedure) Rules provides that the Tribunal would have jurisdiction even if part of cause of action has arisen. In other words there shall be action on the part of the authorities within the jurisdiction in pursuance of the order passed by the other authority situated outside the jurisdiction. In order to bring the case within the ambit of the aforesaid situation, only such cases are covered where for example, a person has been transferred from station-A to Station-B and he was not allowed to join duty at Station-B. In that eventuality, the person aggrieved can file an application at both stations i.e. at Station-A and Station-B as the cause of action has arisen where the transfer order is passed and also where he ~~was~~^{to} join after transfer. Likewise, if any person who is working in different places and if the dispute relates to the grant of higher pay scale a part of cause of action to receive the higher pay scale is available to him in all the places and as such he could maintain an application before the Bench where he was working as part of cause of action arises at the place where he is working. However, in the case of the applicant simply because he is residing in Jaipur and he has sent an application for appointment

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to the appropriate authority at Delhi and he has also received the rejection letter passed by the Delhi authorities at Jaipur, therefore, part of cause of action arises at Jaipur cannot be accepted as this fact has no bearing with the lis or dispute involved in the case. Further, cause of action means that bundle of facts which person must prove, if traversed to entitle him to a judgment in his favour by the court. Thus, receipt of the communication at best only gives the party right of action based on the cause of action arising out of the action complained of but certainly it will not constitute cause of action on the pleas that some events, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of this Tribunal.

9. The view which has been taken by this Tribunal is no longer res-integra and is fully supported by various decisions of the Apex Court as well of the High Court, few of which are noticed here. In the case of Union of India and ors. vs. Adani Exports Ltd. And another, AIR 2002 SC 126, the Apex Court has held that existence of the registered office of a Company within territorial jurisdiction of the Court does not ipso facto give a cause of action to that Court. It was further held that in order to confer jurisdiction on a High Court to entertain a writ petition, the High Court must be satisfied from the entire facts pleaded

in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It was further held that facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action. Further, the Full bench of the Kerala High Court in the case of Naik Nakul Deb Singh etc. vs. Deputy Commandant (CISF Unit), Kottayam and ors., 1999 (6) SLR 381 has held that receipt of communication by itself does not constitute cause of action. At the best receipt of the order or communication only gives the party right of action based on the cause of action arising out of the action complained of. When that action takes place outside the territorial jurisdiction of the High Court and an appeal therefrom is dismissed by an appellate authority located outside the jurisdiction of the High Court cause of action wholly arises outside the jurisdiction of the High Court and Article 226(2) of the Constitution cannot be invoked to sustain a writ petition on the basis that part of cause of action has arisen within the jurisdiction of the Court, merely because the appellate order communicated and received while the petitioners was residing within the jurisdiction of the Court.



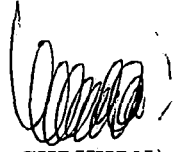
read advertisement at Calcutta and submitted the offer form Calcutta and made representations from Calcutta would not constitute facts forming an integral part of cause of action. The Hon'ble High Court also took note of the observations of the Hon'ble Supreme Court made in Natural Gas Commission's case in para 12 of the said judgment of the Supreme Court which reads as under:-

"It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in case which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be falling in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation...."

11. In view of the law laid down by the Hon'ble Supreme Court as well as by the Hon'ble High Court, the fact that applicant is residing at Jaipur and he has sent an application for appointment to the appropriate authority at Delhi and he has also received the rejection letter passed by the Delhi authorities at Jaipur, therefore, part of cause of action arises at Jaipur cannot be accepted as this fact has no bearing with the lis involved in the case. Further, cause of action means that bundle of facts which person must prove, if traversed to entitle him to a judgment in his favour by the Court. Thus receipt

of the communication at best only gives the party right of action based on the cause of action arising out of the action complained of but certainly it will not constitute cause of action on the plea that some events, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of this Tribunal.

12. Therefore, in my considered opinion, this application is not maintainable. Accordingly, it is held that the application is not maintainable and Registry is hereby directed to return the same to the applicant for presentation to the appropriate forum by keeping a copy of the same. No costs.


(M.L. CHAUHAN)
Member (J)

R/