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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

11.11.2010

OA No. 176/2010

Mr. Abhimanya Singh, Proxy counsel for
Mr. R.D. Rastogi, Counsel for applicant.

On the request of the proxy counsel appearing on behalf of the applicant, let the matter be listed on 30.11.2010. It is made clear that in case no arguments is made on behalf of the applicant on that date, this Tribunal will pass appropriate order as number of opportunities have been granted to the applicant in this case.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

AHQ

30-11-2010
Mr. R.D. Rastogi, Counsel for applicant

Heard learned Counsel for applicant.

For the reasons dictated separately, we are of the view that this Tribunal has got no jurisdiction to entertain the matter. Accordingly, the OA is disposed of.

Anil Kumar
(Anil) kumar)
M(A)

M.L. Chauhan
(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 30th day of November, 2010

Original Application No. 176/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Mani Ram Sharma
s/o Shri Kishori Lal Sharma,
r/o Village Badangarhi,
Post Akhaigrah,
Tehsil Nadbai,
District Bharatpur.

.. Applicant

(BY Advocate: Shri R.D.Rastogi)

Versus

1. Union of India
through its Secretary,
Department of Personnel &
Training, North Block,
New Delhi.
2. Ms. Sharandeep Kaur Brar
D/o not know,
r/o 5578, Sector 38,
West Chandigarh, 160014,
Presently under training as
IAS Probationer at
Lal Bahadur Shastri National
Administrative Academy,
Mussoorie (Uttarakhand).

... Respondents

(By Advocate:)



ORDER (ORAL)

The grievance of the applicant is regarding the order No.13013/2/2009-AIS (I) dated 18th January, 2010 (Ann.A/1) issued by the Department of Personnel and Training, New Delhi whereby the applicant who is presently under training IAS (Probationer) has been allotted Manipur-Tripura cadre of Indian Administrative Service. The applicant has further challenged the OM dated 10.4.2008 (Ann.A/2) i.e. cadre allocation policy for the All India Services-IAS/IPS/IFS whereby no provision has been made for adjustment of physically disabled candidates against the outsider vacancies of the home State or other States as per the preferences given by physically handicapped persons or outsider vacancies of other States. The applicant has inter-alia prayed that the impugned order dated 18th January, 2010 be quashed and the respondents may be directed to allot Rajasthan cadre to the applicant and if need be respondent Ms. Sharandeep Kaur Brar may be shifted from Rajasthan cadre to other cadre of her choice.

3. When the matter was listed on 6.4.2010, the matter was heard in part and it was observed that prima-facie this Tribunal has got no territorial jurisdiction to entertain the matter in view of the provisions contained in section 19 of the Administrative Tribunals Act, 1985 read with Rule 6 of the CAT (Procedure) Rules, 1987 and at the request of the learned counsel for the applicant, the matter was adjourned to 21.4.2010. Thereafter, the matter was adjourned from time to time.

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4. We have heard the learned counsel for the applicant at length. The learned counsel for the applicant has drawn our attention to letter dated 5.10.2009 (Ann.A/3) whereby the applicant was informed that he has been allocated to the Indian Administrative Service on the basis of CSE-2008 and he has been nominated to Phase-I Professional Training for IAS and he may contact the Course Coordinator Shri B.Ashok for further instructions. It was further mentioned that the formal offer of appointment to IAS will be sent in due course. According to the learned counsel for the applicant, the said letter has been addressed and has been received at the native place of the applicant i.e. Distt. Bharatpur, Rajasthan, as such, this Tribunal has got territorial jurisdiction to entertain the matter. For that purpose, the learned counsel for the applicant has placed reliance upon the following decisions of the Apex Court and Rajasthan High Court:-

- i) Prabhu Dayal vs. State of Rajasthan & Ors., 1993(1) RLR 592
- ii) Mohan Singh vs. UOI and Anr., 2001 (4) WLC 41
- iii) Navinchandra N. Majithia vs. State of Maharashtra, 2000(7) SCC 640
- iv) Balu Singh vs. UOI & Ors., 1996 (1) WLC(Raj.) 699
- v) Mahender Pratap Singh Kapil vs. UOI & Ors., 1999 (1) WLC 375
- vi) Eastern Coalfields Ltd. vs. Kalyan Banerjee, (2008) 3 SCC 456
- vii) Om Prakash Srivastava vs. UOI & Anr., (2006) 6 SCC 207
- viii) Birla Institute of Technology Mesra, Ranchi vs. Yamini Shukla and Ors., AIR 1996 All. 244.
- ix) Prem Cables Pvt. Ltd. vs. Assistant Collector Customs and Ors., 1978 (11) WLN 481.

5. At the outset, it may be stated that the applicant cannot take any assistance from these decisions as these decisions were

rendered by the Apex Court in the light of the provisions contained under Article 226 (2) of the Constitution of India. Further the decisions referred to by the applicant in the case of Prabhu Dayal and Mohan Singh (supra) were also noticed by this Tribunal in the case of Jitendra Kumar Mittal vs. Union of India and Ors., 2006 (1) (CAT) AISLJ 393, detailed reference of which is being made hereinunder whereby the Tribunal has considered the provisions of Section 19 of the Administrative Tribunals Act, 1985, Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987, provisions contained in Section 20 of Code of Civil Procedure, 1908 as well as Article 226 (2) of the Constitution of India. It was held that the power of High Court under Article 226 (2) is wide enough whereas section 19(1) of the Administrative Tribunals Act does not provide that this Tribunal has jurisdiction regarding the order passed outside the State and to entertain application in terms of Section 19(1) of the Administrative Tribunals Act as is mandated under Article 226 (2) of the Constitution of India. In para 4 and 5 of the judgment rendered by this Tribunal in the case of Jitendra Kumar Mittal (supra) it was recorded as to how the judgments rendered by the Hon'ble High Court in the case of Mohan Singh and Prabhu Dayal (supra) are not applicable. Further, although the applicant has placed reliance upon the decision of the Apex Court in the case of Eastern Coalfields Ltd. (supra) but if one has regard to para 6 and 7 of the judgment, it is clear that even under Article 226 (2) the entire bundle of facts pleaded need not constitute the cause of action as what is necessary to be proved is material fact whereupon a writ

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petition can be allowed. For that purpose, reliance was also placed upon three judge Bench decision of the Apex Court in the case of Kusum Ingots and Alloys Ltd. vs. Union of India. At this stage, it will be useful to reproduce para 6 and part of para-7 of the judgment in Eastern Coalfields (supra), which thus reads:-

"6. The jurisdiction to issue a writ of or in the nature of mandamus is conferred upon the High Court under Article 226 of the Constitution of India. Article 226(2), however, provides that if cause of action had arisen in more than one court, any of the courts where part of cause of action arises will have jurisdiction to entertain the writ petition.

7. 'Cause of action' for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20 (c) of the Code of Civil procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

The question to some extent was considered by a Three judge Bench of this Court in Kusum Ingots & Alloys Ltd. vs. Union of India and Anr. MANU/SC/1986/2004: 2004(186) ELT3(SC) stating:

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court." (emphasis supplied).

6. Thus, as can be seen from the portion as quoted above, the Apex court has categorically held that entire bundle of facts pleaded need not constitute the cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed. It has further been categorically held that facts pleaded must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action

which would confer jurisdiction to the court. Thus, the contention raised by the applicant that he has received communication at his native place, according to us, cannot be regarded as material fact on the basis of which relief can be granted to the applicant. The applicant is aggrieved by the order passed by the authorities at Delhi whereby he has been allotted Manipur-Tripura cadre and has also made grievance regarding the policy decision Ann.A/2 whereby no provision has been made for adjustment of physically disabled candidates.

7. Thus, in view of what has been stated above, we are of the view that the instant case is squarely covered by the judgment rendered by this Tribunal in the case of Jitendra Kumar Mittal (supra), which decision was further followed in OA no.386/2008, Ramesh Chand vs. Union of India decided on 20.10.2008 and OA No.260/2010 Arum Kumar Sharma vs. UOI. At this stage, it will be useful to quote para 4,5,6,7 and 8 of the judgment in the case of Jitendra Kumar Mittal, which thus reads:-

"4. At the outset, it may be 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 the ground required to be established by the petitioner to claim relief claimed by him. In that case grievance of the petitioner was regarding non-payment of his pensionary benefits. The Hon'ble High Court after noticing the explanation No.III of Section 17 of the Code of Civil Procedure, 1882 inserted vide Act No.7 of 1988 which was forerunner of Section 20 of the Code of Civil Procedure 1908 held that 'payment of money under contract' is part of the performance of the contract and will furnish a cause of action, consequently the place where the money is expressly or impliedly payable will be a place where a part of the cause of action arises. Obviously, on this principle, if in

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a matter arising under the contract, the money is payable by one party to another at any particular place either by express term of the contract or by implication the place where money is payable also give the jurisdiction to the Court exercising authority over it. The Hon'ble High Court further held that claim to pension, the place where the petitioner is entitled to or eligible for payment of pension falls within the territorial jurisdiction of this Court and on such claim being established, part of cause of action arises within this Court and, therefore, this Court has the jurisdiction to entertain such petitions. I fail to understand how the ratio as laid down by the Hon'ble High Court is applicable to the facts and circumstances of this 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

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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 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 judgment 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

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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 has joined 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 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. "

8. It may be stated that the observations made above by this Tribunal were based upon the decision of the Hon'ble Apex Court in the case of Union of India and Ors. Vs. Adani Exports Ltd. and Another, AIR 2002 SC 126 and decision rendered by 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 as can be seen from para 9 of the judgment rendered in the aforesaid case. In para 10 of the judgment, the Tribunal has noticed the decision in the case of State of Rajasthan and ors. vs. M/s Swaika Properties and anr., AIR 1985 SC 1289 whereby while interpreting the provisions of Article 226(2) of the Constitution of India the Apex Court held that mere service of notice does not give rise to part of cause of action unless the notice is an integral part of the impugned order. This Tribunal has also relied upon the decision of the Karnataka High Court in Narayan Swamy G.V. vs. Union of India and Others, 1998 (5) Kar. L.J.279 whereby it was held that 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 High Court. Further reliance was also placed upon

the decision of the Apex Court in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and ors., JT 1994 (5) SC 1, whereby the Apex Court in para 12 has deprecated the tendency of the Courts entertaining the matter which does not fall within the territorial jurisdiction of that Court and held that 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. Ultimately in para 11 of the judgment this Tribunal in the case of Jitendra Kumar (supra) has made the following observations which thus reads:-

"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

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unconnected with the cause of action had occurred within the jurisdiction of this Tribunal.

According to us, the present case is squarely covered by the reasoning given in the case of Jitendra Kumar (supra).

9. For the foregoing reasons, without going into merit of the case, we are of the view that the present OA can be disposed of at this stage as this Tribunal has got no territorial jurisdiction.

10. Accordingly, the Registry is directed to return the paper book of OA to the applicant for presenting the same before the competent court by retaining one copy for record.


(ANIL KUMAR)

Admv. Member

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(M.L. CHAUHAN)

Judl. Member