

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

TRANSFERRED APPLICATION NO. 22 OF 2010  
Cuttack this the 11<sup>th</sup> day of September, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Bijay Kumar Gochhayat, aged about 41 years, S/o. Sri Krushna Chandra Gochhayat, resident of Village-Kothia Sahi, PO/PS-Kujanga, Dist-Jagatsinghpur, at present working as Upper Division Clerk, Office of Executive Engineer, Hydrological Division, N.W.D.A., Jalasampand Bhawan, Salt Lake City, Kolkata-91

...Applicant

By the Advocate (s)-Mr.K.C.Kanungo

-VERSUS-

1. National Water Development Agency represented through:
2. Director General, N.W.D.A. Community Centre, Saket, New Delhi-17.
3. Chief Engineer (South), N.W.D.A., 10-2-289/39, Santi Nagar, Hyderabad-28 (AP)
4. Superintending Engineer (W.E) Investigation Circle, N.W.D.A., 579, 1<sup>st</sup> 'A' Main, 44 Cross, 8<sup>th</sup> Block, Jayanagar, Bangalore-560 082
5. V.V.RamanSarma, Executive Engineer & Inquiry Officer, Investigation Division-II, N.W.D.A. House No.10-2-289/39, Shanti Nagar, Hyderabad-500 028

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The present T.A.No.22 of 2010 arises from a difference of opinion between the Hon'ble Member(A) and the Hon'ble Member(J) on the issue of maintainability of the T.A. (Bijay Kumar Gochhayat vs. NWDA &Ors.)

The applicant in the T.A. (Shri Bijay Kumar Gochhayat) was working as an Upper Division Clerk in the Office of the

Executive Engineer, Hydrological Division, N.W.D.A., Kolkata at the time of filing of O.J.C. No.10524 of 2001 before the Hon'ble High Court of Orissa, praying for quashing of the charge sheet, inquiry report and the order of punishment imposed on him by the Chief Engineer (S), NWDA, Hyderabad. The Hon'ble High Court of Orissa in their order dated 29.10.2009 had transferred the case to CAT, Cuttack Bench for adjudication. When the case was taken up in this Tribunal, the learned counsel for the respondents had raised the issue of maintainability of the O.A. on the ground that the Disciplinary Authority was at Hyderabad and the applicant on promotion had been transferred from Bhubaneswar to Bangalore vide order dated 15.9.1995 and at the time of departmental proceedings was working at Bangalore. This Tribunal in an elaborate order dated 05.10.2016 analyzed the facts of the case, the cause of action and the law point involved in the context of the various cases laws and judicial pronouncement and passed the following order.

"10. In the instant case the charge sheet indicates that most of the documents were available at Bhubaneswar and listed witnesses were also from Bhubaneswar. Importantly, the applicant in his ill health was stationed at Bhubaneswar.

Hence it is not in dispute that :

- (i) An extraordinary situation arose i.e., the ill health of the applicant confining him to bed from 07.09.1995 till he proceeded to join at Bangalore (not disputed by Respondents). It is clearly proved

that the applicant was all through at Bhubaneswar.

- (ii) Cause of action means bundle of facts and in this case Annexure 1 to 11 were communicated to the applicant at his Bhubaneswar address and the applicant has challenged the charge sheet, the whole inquiry process and obviously the consequential orders.
- (iii) the stay of the applicant at the time of misconduct was at Bhubaneswar and all correspondences during the enquiry were made in his home address at Bhubaneswar. Therefore, the provision the cause of action in part has arisen at Bhubaneswar.
- (iv) Construction and beneficial interpretation of service laws are the fundamental postulates of law of Interpretation of Statute. The cause of action, wholly or in part, has arisen in the Rules, 1987 is derived from Constitution of India (Art. 226). Situation very often arises partly to invoke the jurisdiction of a Court/Tribunal. The expressions 'cause of action' and 'partly' are to be considered with pragmatism in justice-oriented process approach".

2. T.A. was taken up for adjudication in the Cuttack Bench of the Tribunal and the matter was heard on 8.2.2017 and was reserved for orders., with the following observations:

"Heard Mr.K.C.Kanungo, learned counsel for the applicant and Mr.S.B.Jena, learned counsel for NWDA. Hearing in the matter is concluded. Orders are reserved".

3. However, the Hon'ble Member(J) who authored the order of the Division Bench made the following remarks in the draft order.

"4. When the matter was heard on merit, learned counsel for the official respondents raised a preliminary objection to the maintainability of the present application before this Bench of the Tribunal. The respondents in para 2 of their counter, have categorically averred that consequent upon his promotion, the applicant was relieved from Bhubaneswar on 15.09.1995 (After-noon), and was supposed to join in his new place of posting at Bangalore, but since the applicant did not join his new place of posting, Respondent No.3, i.e., Superintending Engineer(W.E.), Investigation Circle, NWEDA, Bangalore took action against the applicant followed by disciplinary proceeding. According to the learned counsel for the official respondents, since the entire cause of action for initiating disciplinary proceeding arose due to non joining of the applicant at Bangalore, and no part of cause of action arose at Bhubaneswar, jurisdiction of this Bench of the Tribunal is not attracted. Further, since the applicant was relieved from Bhubaneswar station, and memorandum of charge memo dated 12.08.1996 was issued by the Disciplinary Authority, Chief engineer, Shanti Nagar, Hyderabad, so also Appellate Authority was outside the State of Odisha, challenging such their orders in Odisha is legally misconceived. The applicant should have agitated his grievance before the Hon'ble High Court of Karnataka at Bangalore in 1999, and subsequently at Central Administrative Tribunal, Bangalore Bench. But such a claim cannot be adjudicated by this Bench for

want of territorial jurisdiction. That apart, even though the order of Appellate Authority under Annexure-A/17 was passed on 17<sup>th</sup>/21<sup>st</sup> July, 2000, the original writ application was filed before the Hon'ble High Court only on 13.08.2001 as it reveals from the order-sheet. So, admittedly the filing of the writ petition was also barred by limitation. Since the Disciplinary Authority's order dated 08.10.1999(Annexure-A/15) passed by Chief Engineer (South), Hyderabad, such a writ petition or even original application could not have been filed in Cuttack. All the respondents are staying outside Odisha, having offices at New Delhi, Hyderabad and Bangalore, Disciplinary proceeding conducted at Hyderabad. Hence ordered.

5. The TA No.22 of 2010 is dismissed as this Bench of the Tribunal has no locus standi and territorial jurisdiction to entertain such a claim. The applicant is advised to pursue his remedy before the appropriate Bench".

4. The Hon'ble Member(A) however, recorded a dissenting order with the following comments:

- "2. From the above conclusion, it is clear that the matter has been considered by the Hon'ble Shri S.K.Pattnaik, Member(J), Patna Bench only from the point of view of maintainability and not on merit of the matter. In this connection, it is to be noted that the point of maintainability has been already decided by a Division Bench by an order dated 5.10.2016, and it has been held that this Bench of the Tribunal has jurisdiction to adjudicate the matter on merit. In view of this, the point of maintainability and/or the jurisdiction of this Tribunal to try and adjudicate the instant T.A. is no more open to be decided once again and the

matter is to be considered on merit. In my view, if this Division Bench comes to a conclusion that the present T.A. is not maintainable before this Tribunal on the ground of lack of territorial jurisdiction, it would, in effect, tantamount to setting aside the orders already passed by a Division Bench earlier holding that this Bench has jurisdiction to adjudicate the matter. According to settled principles of law, in a matter where a Division Bench in its opinion comes to a conclusion that the views expressed and findings recorded by an earlier Division Bench is fallible being not in conformity with the law, it would be in the fitness of things, to refer the matter to a Full Bench to resolve the issue. However, in the instant case, the peculiarity involved is that since the undersigned [Member (A)] has earlier concurred with the view of the Hon'ble Member(J) who had prepared the order, and held that the Tribunal has jurisdiction to adjudicate the matter, it would be unethical to abnegate the view already taken by him. In view of this, with great respect, I beg to differ in opinion on the point as under.

- i) Whether a Division Bench can take a view contrary to what has been decided by another Division Bench ?
- ii) Whether the views expressed and findings recorded by a member in a Division Bench be abnegated by the same member sitting in another Division Bench ?

In view of the provisions under Section-26 of the A.T.Act, 1985, the matter be placed before Hon'ble Shri S.K.Pattnaik, Member(J), CAT, Patna Bench to state the point or points of difference, so that the matter could be referred to Hon'ble the Chairman to resolve the issue".

5. The matter was referred to the Hon'ble Chairman, Principal Bench, New Delhi for constitution of 3<sup>rd</sup> Member to resolve the issue of maintainability of the T.A. before the CAT,Cuttack Bench. Notice was issued to both the learned counsels and their arguments were heard on 26.10.2017. The learned counsels in their written note of submission have also cited the judicial pronouncements which I find have already been discussed and analyzed in the order passed by the Division Bench on 5.10.2016. The learned counsel for the applicant has reiterated that part of the cause of action had arisen when the applicant was posted at Bhubaneswar and had remained on leave which became the ground for disciplinary action against him. The learned counsel for the respondents on the other hand argued that the cause of action arose at Bangalore in the State of Karnataka where the applicant was working and residing at the time of filing of the OJC No.105425 of 2001 in the Hon'ble High Court of Orissa. The applicant had earlier worked in Bhubaneswar but was relieved from his place of working on 15.9.1995(AN). After that he was no longer an employee of the Investigation Division No.1 of NWDA at Bhubaneswar. However, he did not join at Bangalore immediately after getting relieved from Bhubaneswar and remained absent without leave which constituted unauthorized absence from duty and therefore, disciplinary action was taken against him. No cause of action arose in Orissa after the

applicant was relieved from the O/o. Executive Engineer, NWDA, Bhubaneswar on 15.9.1995. Therefore, the T.A. should be adjudicated outside the jurisdiction of CAT, Cuttack Bench.

6. The issue of maintainability had already been adjudicated in detail by a Division Bench of this Tribunal and orders were passed on 5.10.2016 where there was no difference of opinion between the Hon'ble Member(J) and Hon'ble Member(A). Both of them had agreed that the Cuttack Bench of the Tribunal had jurisdiction over the matter and therefore, the T.A. could be adjudicated by this Bench. When the matter was heard on merit on 8.2.2017, the learned counsel for the respondents again raised the issue of maintainability of the T.A. and the Hon'ble Member(J) in the judgment authored by him and sent to the Hon'ble Member(A) for concurrence, took the stand that this Bench had no jurisdiction over the matter and therefore, the T.A. was not maintainable. However, this judgment of the Hon'ble Member(J) was not concurred by the Member(A) and the matter was referred to a Third Member Bench.

7. The point to be decided by the 3<sup>rd</sup> Member Bench regarding maintainability has been decided since there was no dispute between the Hon'ble Shri A.K.Patnaik, Member(J) and Hon'ble Shri R.C.Misra, Member(A) when they sat in the Division bench and agreed that the T.A. was maintainable in this Tribunal. The issue of maintainability is not open to adjudication again. Hon'ble Shri R.C.Mishra, Member(A) had



rightly taken the stand that having been a Member in the Division Bench which decided on maintainability, it was no longer open to him to be a party to the issue of maintainability again. It is, therefore, my considered view that at this stage the issue of maintainability need not be reopened due to the order passed by the Division Bench consisting of Hon'ble Shri A.K.Patnaik, Member(J) and Hon'ble Shri R.C.Mishra, Member(A) on 5.1.2016.

8. Rule-6 of CAT (Procedure) Rules, 12987 inter alia prescribed as below:

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) to 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. The applicant was staying at Bhubaneswar at the time of the alleged misconduct and correspondences during inquiry were made in his home address at Bhubaneswar. During the hearing of the T.A. on 26.10.2017, learned counsel for the applicant filed a Memo annexing the office order dated 11.5.2017 by which the applicant in the T.A. has been transferred to the Investigation Division of NWDA at Bhubaneswar. He has also assumed the charge in the post of UDC on 13.6.2017. On 18.05.2018 learned counsel for the respondents has filed a further memo submitting that the applicant is still continuing at Bhubaneswar. I am of the view that presence of the applicant at Bhubaneswar is an additional factor in continuing the adjudication of the T.A. at the Cuttack Bench of the Tribunal.

10. In view of the above, I concur with the view of Shri R.C.Misra, Hon'ble Member(A) in order dated 04.07.2017. The T.A. No.22 of 2010 is maintainable in the CAT, Cuttack Bench. Registry is directed to post this matter for hearing at an appropriate date.

(DR.MRUTYUNJAY SARANGI)  
MEMBE(A)

BKS

2<sup>nd</sup> August, 2018

T.A.No.22 of 2010 arising out of a difference of opinion between the Hon'ble Shri R.C. Mishra Member(A) and Hon'ble Shri S.K. Pattnaik, Member(J) (since retired) on the issue of maintainability had been referred to the third Member. Since the order on this point has been prepared, CAT, Principal Bench may be moved to put up this matter before Hon'ble the Chairman for necessary directions.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

DEPUTY REGISTRAR