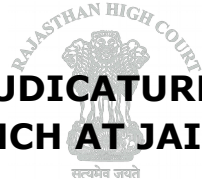




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 13031/2017

Norat Rana

----Petitioner

Versus

1. Union Of India through its Principal Secretary, Department Of Railways, Railway Board, New Delhi.
2. Railway Protection Special Force through its Director General, New Delhi.
3. The Senior Commanding Officer, 12th BN, Railway Protection Special Force, Thakurli.

----Respondents

For Petitioner(s) : Mr. Punit Singhvi
Mr. Ayush Singh
Mr. Ajay Singh Rathore

For Respondent(s) : Mr. Chandrashekhar Sinha
Mr. Devesh Yadav

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 06/04/2023
Pronounced on : 26/04/2023

Judgment

(1) Vide impugned order dated 15.11.2016 passed by Senior Commanding Officer, 12th BN, Railway Protection Special Force, Thakurli (Maharashtra), services of the petitioner have been terminated from the post of Constable under Rule 57.3 of the Railway Protection Force Rules, 1987 (for short "RPF Rules 1987") while on probation period.

(2) Aggrieved by the impugned order dated 15.11.2016, the petitioner submitted an appeal before the Appellate Authority



and the same was rejected by the DIG/R&T, Railway Board, Ministry of Railways, New Delhi vide communication dated 27.4.2017.

(3) Petitioner has assailed both the orders before this court on the grounds that the impugned order dated 15.11.2016 is ex facie stigmatic and punitive, and such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules.

(4) Counsel for the petitioner submitted that the petitioner has been discharged on the many grounds mentioned in the impugned order without holding proper inquiry and without getting a reasonable opportunity of showing cause against his discharge, which amounts to removal from service within the meaning of Article 311(2) of the Constitution of India, therefore, the same is liable to be quashed by this court in the light of following judgments :-

- (i) Abhay Jain v. High Court of Judicature for Rajasthan
2022 SCC OnLine SC 319
- (ii) Dr. Vijayakumaran C.P.V. v. Central University of Kerala
(2020) 12 SCC 426
- (iii) Rajasthan State Road Transport Corporation
v. Poornendu Sharma
D.B.Spl Appeal Writ No.403/2018 decided on 23.8.2018

(5) Per contra, the counsel for respondents opposed the arguments raised by the counsel for petitioner and has raised two preliminary objections, that the petitioner has got alternative statutory remedy under Rule 219 of RPF Rules 1987 to file Revision Petition before the Revisional Authority. He further submitted that the impugned orders have been passed by the authorities at the State of Maharashtra, hence this court has no territorial jurisdiction to hear and entertain this writ petition. He



further submitted that no cause of action or part cause of action has arose in the State of Rajasthan, hence this court shall not entertain this writ petition. In support of his contentions he has placed reliance on the judgment of High Court of Punjab and Haryana in the case of Sukhjinder Singh v. Union of India, LPA-421/2017 (O&M) decided on 4.8.2022. He further submitted that an employee on probation period does not have right to continue the job and his services can be terminated during the period of probation. In support of his contentions he has placed reliance on the judgment of Hon'ble Apex Court in the case of CISF v. Abrar Ali (2017) 4 SCC 507. He submitted that under these circumstances, the interference of this court is not warranted.

(6) Heard and considered the submissions made at the Bar and perused the material available on record.

(7) The respondents have taken the preliminary objection that against the impugned order, Revision Petition under Rule 219 of RPF Rules 1987 is maintainable and bypassing the jurisdiction of Revisional Authority, the petitioner has straight away approached this court by way of filing this writ petition under Article 226 of the Constitution of India.

(8) It is worthy to note here that the petitioner has been discharged by the authority in exercise of its powers under Rule 57.3 of RPF Rules 1987 by treating him as a recruit and did not find him fit to retain in service and he was terminated. The petitioner challenged the aforesaid order before the Appellate Authority by way of filing an appeal, but the same has not been decided on its merits and the same was dismissed on a technical ground that as per Rule 148.5(i) of RPF Rules 1987, service of an



enrolled member if terminated under Rule 57.3 shall not amount to any punishment. The action under Rule 57.3 is not in the nature of a disciplinary proceedings, hence the appeal was rejected by observing that as per Rule 212 there is no appeal against an order of discharge of a recruit trainee who has not been enrolled as a member of the Force. Meaning thereby, the Appellate Authority has not treated the petitioner as an enrolled member of the Force and he was treated as a recruit only and accordingly his appeal was not entertained on merits.

(9) Now the question which remains for consideration before this court is "whether Revision Petition against an order is maintainable"? Rule 219 of RPF Rules 1987 deals with the provisions of filing Revision Petition, which reads as under :-

219.1 An enrolled member of the Force whose appeal has been rejected by a competent authority may prefer an application for revision to the next superior authority. The powers of revision may be exercised only when,-
(a) in consequence of some material irregularity, there has been injustice or miscarriage of justice; or
(b) fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order.

(10) Perusal of Rule 219.1 indicates that an enrolled member of the Force may prefer an application for revision to the next superior authority whose appeal has been rejected by a competent authority. But, here in this case, the competent authority has rejected the appeal by treating the petitioner as recruit only and the petitioner has not been treated as an enrolled member of the Force. Hence, only on this technical count, the appeal filed by the petitioner was dismissed as not maintainable. When the Appellate Authority is of the view that appeal is not maintainable, then how Revision Petition is maintainable when the petitioner has not been treated as an enrolled member of the



Force. In view of the above discussion, this court finds no force in the argument of the counsel for respondent that this writ petition is not maintainable when the petitioner has an alternative efficacious remedy of filing Revision Petition under Rule 219 of RPF Rules 1987.

(11) Now this court proceeds further to decide the next objection "whether this court has territorial jurisdiction to hear and decide the matter of termination order of the petitioner passed by the authorities situated in the State of Maharashtra"? Now the issue in this petition is that whether any cause of action or part cause of action has arisen in the State of Rajasthan, which gives right to the petitioner to invoke the extra ordinary jurisdiction of this court by filing writ petition under Article 226 of the Constitution of India?

(12) Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.



(13) Clause (2) of Article 226 of the Constitution of India reads thus :-

"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. "

(14) Section 20(c) of the Code of Civil Procedure reads as under :-

"20. Other suits to be instituted where defendants reside or cause of action arises. - Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction -

(a)-(b) * * *

(c) the cause of action, wholly or in part, arises."

(15) Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

(16) Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

(17) Hon'ble Apex Court in Oil & Natural Gas Commission v. Utpal Kumar Basu and Ors. (1994) 4 SCC 711, held that the question as to whether the court has a territorial jurisdiction to



entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.

(18) Hon'ble Apex Court in Oil and Natural Gas Commission's case (supra) held that all necessary facts must form an integral part of the cause of action. It was observed :-

"So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action..."

(19) In Union of India and Ors. v. Adani Exports Ltd. and Anr. (2002) 1 SCC 567, it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part of it arose within its jurisdiction.

(20) Recently, in National Textile Corporation Ltd. and Ors. v. Haribox Swalram and Ors. (2004) 9 SCC 786, a Division Bench of Hon'ble Apex Court held :-

"As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed..."

(21) 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 only with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court.





(22) In the case of Lt. Col. Khajoor Singh v. Union of India AIR 1961 SC 532, it has been held by Hon'ble Supreme Court that the jurisdiction of High Court depends not on the residence or location of the person affected by the order, but of the person or authority passing the order and the place where the order has been passed.

(23) In Eastern Coalfields Ltd v. Kalyan Banerjee (2008) 3 SCC 456, the Hon'ble Apex Court held in para 13 as under :-

"In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma Area within the State of Jharkhand, we are of the opinion that only because the Head Office of the appellant - company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, particularly when the Head Office had nothing to do with the order of punishment passed against the respondent."

(24) In the present case, as noticed, the petitioner was posted at Kurla Railway Station Thakurli on 5.8.2016, and notice dated 31.8.2016 was served upon him with following allegations :-

"In this connection, the administration with the opinion that you being a probationer:

- a) Disobeyed and neglected to promptly carryout lawful orders issued to you by your superiors vide Rule No.146.3 (i)
- b) Misconduct towards another member of the Force in abusive manner and misbehave with such member vide Rule No.146.5 (a) & (b)
- c) Disobeyed lawful command of superior officers and ill-treating any enrolled member of the Force subordinate him in rank vide 147 (iii) (xii)
- d) Holding out threat which not warranted by law vide Rule No.147 (xxi)

Further, your records revealed that during the short span of your service, you have been warned twice by your superiors for your indiscipline activities in addition to awarding petty punishments.

Hence, I, the undersigned being Appointing Authority, considering the all relevant documents on record do find reasonable cause that you are not fit for permanent appointment as a member of the Force and hence as to why you should not be terminated from the service, as provided in Rule No.57.3 of RPF rules 1987."

(25) It is worthy to note here that the petitioner responded to above notice from Thakurli (Maharashtra) and the disciplinary inquiry was conducted against him at Thakurli and finally the



impugned order dated 15.11.2016 was passed and served upon him at Thakurli, by which his services were terminated. Hence, it is clear that no cause of action or part cause of of action has arisen in the State of Rajasthan.

(26) The facts which are pleaded in the petition, do not disclose that any cause of action or part cause of action has arisen within the territorial jurisdiction of this court. Hence, this writ petition is not maintainable.

(27) This petition is dismissed with liberty to the petitioner to work out his remedy before the appropriate forum as may be available to him under the law. However, this judgment will not come in the way of the petitioner to approach the territorial jurisdiction forum.

(28) Stay application and all applications, pending if any, also stands dismissed.

No order as to costs.

(ANOOP KUMAR DHAND), J.

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