* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 30th August 2022**

\+ W.P.(C) 700/2005

H.S. RAI ..... Petitioner

Through: Mr. Gajendra Giri and Mr. Aditya Giri, Advocates

versus

UOI & ORS ..... Respondent

Through: Mr. Raj Birbal, Sr. Advocate with Mr. Raavi Birbal and Mr. Rishabh Nigam, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil writ petition under Article 226 of the Constitution of India on behalf of the petitioner seeking the writ of certiorari thereby quashing the order dated 16th January 2003 and a writ in the nature of mandamus directing the respondents to reimburse the petitioner to the extent of his entitlement.

2. The petitioner was an employee with Projects and Development India Ltd. (hereinafter "PDIL"), which is a government undertaking and controlled by the Ministry of Chemical and Fertilizer, Government of India. The petitioner joined the PDIL in 1974 in the pay scale of Rs. 400-

900/- and thereafter, was given regular pay scale of Rs. 5400-9425/- since 1980 working as Deputy Project Manager.

3. The petitioner was served with a suspension order on 24th June 2002 issued by General Manager, PDIL, informing him about serious allegations against him for misappropriation of the company's money through reimbursement of medical expenses for abnormally large amount by submitting false, fictitious medical claim for self and family members. The petitioner was informed that during the period of suspension he would not be allowed to enter into the PDIL premises without a written permission of the competent authority, his ID card was surrendered and he was advised to sign the attendance sheet daily. He was made aware that he would be entitled to subsistence allowance during the period of suspension.

4. Thereafter, a Chargesheet Memo was issued against the petitioner on 22nd July 2002, whereby the following Article of Charges were framed against him:-

> *"**ARTICLE I:***
>
> *Dr. H.S.Rai has been misappropriating Company's money by getting reimbursement of medical expenses for himself and for his wife Mrs. Lalita Rai by adopting malpractices and by submitting false and fictitious claims/declaration/statement regularly.*
>
> ***ARTICLE II:***
>
> *Dr. H.S.Rai has claimed reimbursement of medical expenses for treatment for self and his wife by submitting false and fictitious medical claims and*

reimbursement of the same has been received by him regularly.

ARTICLE III:

The prescription indicate that on one specific date the repeat of medicine of previous two different dated is being done by two doctors on various occasions is with the sole moto to get the bill only and not the medicine.

Dr. Rai has submitted the claim form duly signed by him for reimbursement of medicines enclosing therewith two cash memos indicating the same medicines vide no.764 dated 24.5.2001 and 819 dated 25.5.2001 each amounting to Rs.564.55 purchased from the same chemist viz. Arjun Medical Hall, Sindri.

ARTICLE IV:

Dr. Rai has submitted the medical reimbursement claim against medical reference no. FCI/MED/8(8)/1402 dated 24.3.99 for his wife Mrs. Lalita Rai and self which has been signed by himself as Controlling Officer, whereas his HOD was very much present on the date and he was not authorized to sign as Controlling Officer.

ARTICLE V:

Dr. H.S.Rai himself and his wife have been purchasing abnormal over doses of certain specific high value medicines on regular repeated long term basis.

Dr. Rai has consumed 161 number of Envas-10 mg tablets in 29 days while his wife has consumed 84 Envas- 10mg tablets in 29 days. He was advised a dose of 3.5 OD of Envas 10 mg.

Dr. Rai has claimed for reimbursement of medicines for self for 84 days as against 78 days as per prescribed by the attending Doctor.

Dr. Rai has also claimed for reimbursement of medicines for his wife Mrs. Lalita Rai for 98 days as against 78 days as prescribed by the attending Doctor.

ARTICLE VI:

As per the opinion of the CMO, PDIL, Noida that the medicines being purchased by the patient do not fot into any digonist procedure in practice and the doses referred/consumed by patients are also abnormally high and should led to many serious side effects. Since the so called side reactions are not visible, it concludes that the medicines are not being consumed at all which means the bills are being obtained from medical shop without purchasing medicines."

5. The petitioner replied to the Chargesheet Memo vide reply dated 22nd July 2002 whereby he denied the allegations levelled against him.

6. Subsequently, an enquiry officer was appointed to conduct enquiry into the case of the petitioner, which was held in three sessions on 27th September 2002, 1st October 2002 and 3rd October 2002. The concerned enquiry officer submitted his report on 12th October 2002 holding that all the charges as alleged against the petitioner were proved.

7. On and the basis of the enquiry report, the competent authority issued the memorandum dated 16th January 2003 inflicting penalty upon the petitioner in terms of Clause 27(d) of PDIL, CDA Rules, i.e. reduction to a lower post and scale of pay and accordingly, the petitioner

was reverted back to the post of Assistant Chief Engineer in the scale of Rs.5400-9050/- w.e.f. 24th June 2002 i.e. the day he was placed under suspension. The basic pay of the petitioner was fixed at Rs.5400/- from said date. The report stated that the seniority of the petitioner for promotion to the next higher grade will be counted from 24th June 2002. To recover the amount of Rs. 64,271/-, being the amount drawn by him towards medical reimbursement during the year 2001-2002, he was entitled to get medical allowance of Rs.250/- per month w.e.f. 1st December 2002.

8. The following penalty was awarded to him in pursuance of the report of the enquiry officer.

> *"(i) Suspension from 24-6-2002 to 16.1.2003.*
>
> *(ii) Recovering Medical reimbursement of Rs.64271/- for self and family members for the last 2 years.*
>
> *(iii) Reverting to lower post.*
>
> *(iv) Reducing basic from their Rs.9425/-(Stagnating for several years due to their attitudes explained above to Rs.5400/- p.m).*
>
> *(v) Reducing D.A. from approx. Rs.6235 to Rs.4736/- p.m.*
>
> *(vi) Reducing gratuity from approx Rs. 262840 to 169583/-.*
>
> *(vii) Reducing exgratia from approx. Rs. 351112 to 226539/-.*
>
> *(viii) Reducing leave encashment from approx. Rs. 146357/- to Rs. 94430/-*

(ix) Reducing additional gratuity from approx. Rs.2436 to 1572/-

(x) Reducing company's contribution for P.F. from approx. Rs. 1454 to Rs.955/- p.m.

(xi) Denying 9.5 % interesy on reduced amount of P.F. at Sl. No.10."

9. The petitioner thereafter, filed an appeal to the Chairman and Director of the PDIL, Noida, to review the order passed by the Disciplinary Authority vide his letter dated 20th January 2003 and to revoke the penalty imposed upon the petitioner vide his letter dated 10th March 2003.

10. The petitioner is before this Court assailing the order imposing penalty upon him dated 16th January 2003.

11. Learned counsel appearing on behalf of the petitioner submitted that the impugned order and the actions taken by the respondent against the petitioner were against the law and principles of natural justice. It is submitted that petitioner was a victim of malicious activities at the hands of the higher officers of the PDIL.

12. It is submitted on behalf of the petitioner that the punishment inflicted upon him is disproportionate to the charges framed against him. It is submitted that the petitioner never misappropriated money of the company for getting any undue benefits. All the medicines were provided by the hospital itself and all the bills were verified with prescription and signed by Senior Medical Officer, PDIL, Sindri, before final submission and settled by the H.O.D. Finance Department, PDIL, therefore no

allegations can be made against the petitioner that he submitted fake and bogus bills.

13. It is submitted that the inquiry officer could not prove the Charges No. I & II and merely said that the Article of Charges I & II are conclusion of the Charges at Article III, IV, and V so, if Charges on III, IV, and V, are proved, the Charges I & II are automatically proved. This approach of the inquiry officer was patently illegal as there is no reasonable ground for levying the said charges and hence, the report is liable to be quashed.

14. It is submitted that the Charge III has illegally been held to be proved against the petitioner without considering the explanation of the petitioner where he stated that bill no.819 was for the medicine prescribe on 6th June 2001 and it was verified and signed by the Senior Medical Officer, PDIL on 11th June 2001. Further, Charge IV that the petitioner was not the project manager when he signed the bill by himself as controlling officer is wrong as the petitioner was the project manager and he has various documents to the effect. It is further submitted that Charge V has been wrongly held to be proved as the petitioner purchased the medicines for 84 days as prescribed by the Doctor and certified by Dr. A. K. Pandey, Senior Medical Officer and settled by H.O.D. Finance Department. It is submitted that even the Charge VI has been wrongly proved though there was no evidence against the petitioner to that effect.

15. In light of the above submissions, it is prayed that the instant petition be allowed and the penalty order dated 16th January 2003 be

quashed and the respondents be directed to reimburse the petitioner in accordance with his entitlement.

16. *Per Contra*, Mr. Raj Birbal, learned senior advocate appearing on behalf of the respondent no.2 vehemently opposed the instant petition and submitted that the instant petition is not maintainable and is hence, liable to be dismissed. It is submitted that the petitioner has never worked in Delhi and was posted at Sindri, Jharkhand. Moreover, the charges levelled against him relate to a period when the petitioner was posted at Sindri, Jharkhand and even the enquiry conducted, Chargesheet Memo issued and penalty thereto was imposed upon him vide the order which was issued from Sindri, Jharkhand. The respondent does not have any office unit at Delhi but the same is at Noida, and hence, the territorial jurisdiction does not arise before this Court. The learned senior counsel has relied upon the judgment of ***Meenu Rani Jain vs. Projects & Development of India Ltd. & Ors.* CWP No. 446/2003,** decided on 4th December 2003, to submit that the instant petition is liable to be dismissed on the ground of the lack of jurisdiction itself.

17. It is further submitted that the petitioner was senior officer and he was misusing the medical facilities by submitting false and fabricated medical bills for reimbursement causing huge loss to company. The petitioner was suspended for misappropriation of the company's money and an enquiry was thus initiated for his misconduct. The enquiry conducted was just and fair, complying with the principles of natural justice and the petitioner on being found guilty of misconduct, was given a lenient punishment. His scale of pay and post were reduced by order

dated 16th January 2003 and in the appeal, Board of Directors, the Appellate Authority, agreed with the findings of the competent authority.

18. It is submitted that the petitioner applied for Voluntary Retirement vide his application dated 10th March 2003. His application was accepted and he was paid substantial amount as per Voluntary Retirement Scheme (hereinafter "VRS"). His account was also cleared. It is submitted that after taking benefit of VRS, all issues prior to VRS related to employment are deemed to be closed as is well settled. It is submitted that the petitioner cannot now be permitted to turn around and challenge the penalty order dated 16th January 2003 and ask for further monetary relief through that.

19. The written submissions on behalf of the respondent no. 1-3 are also on record and it is submitted on behalf of the respondents that the proper forum for the adjudication of the instant case would be the High Court of Jharkhand and not this Court. It is submitted that since no cause of action has arisen in Delhi, there is no *locus* for the petitioner to approach this Court. Therefore, the instant petition is liable to be dismissed.

20. Heard learned counsel for the parties and perused the record.

21. Since, at the very outset the maintainability of the instant petition has been challenged by the respondents, before delving into the question of law raised by the petitioner it is deemed necessary to look into whether this Court has the jurisdiction to adjudicate upon the challenge to the penalty order dated 16th January 2003 passed against the petitioner. The

respondents have alleged that no cause of action has arisen within the territorial jurisdiction of Delhi, since the petitioner was posted at Sindri, Jharkhand at the relevant time and course of actions which have given rise to the filing of the instant petition.

22. A similar question was dealt with by a Coordinate Bench of this Court in ***Meenu Rani (Supra)*** wherein it was at the very outset established that the Projects and Development India Ltd. does not have any office at Delhi much less its registered corporate office. While dismissing the petition before the Coordinate Bench of this Court it held as follows:-

> *"5. The dispute as raised in the writ petition relates to administrative decisions taken by the first respondent in exercise of powers vested in it. There is no policy decision involved. Whether the action is right or wrong is a different matter. The controlling ministry has nothing to do with the decision taken by the respondent No. 1, which has been challenged in the writ petition, and therefore, the argument of the learned counsel for the petitioner that since the controlling ministry of respondent No. 1 is at Delhi, this court would have a jurisdiction is of no substance and is rejected. Notwithstanding that some courts have taken the view that place where cause of action accrued would not confer jurisdiction to a High Court in proceedings under Article 226 of the Constitution of India. In the present case, I find that no cause of action has accrued at Delhi. Merely because the letter in question was received by the petitioner at Delhi would not constitute any part of cause of action. Admittedly, the corporate and head office of respondent No. 1 is at NOIDA, respondent No. 1 has no office at Delhi. Petitioner was never engaged at*

Delhi. The order of transfer as well as the order of termination emanated in the State of Uttar Pradesh and Jharkhand respectively. No cause of action, in my opinion, has accrued at Delhi.

6. ……. In any case, jurisdiction has to be decided on the fact and pleadings of each case. In the present case, as noted above, I have found that this court would have no jurisdiction to entertain the petition. I hold accordingly. The writ petition is held to be not maintainable due to lack of jurisdiction of the Delhi High Court."

23. In the aforesaid case, the PDIL was a party, as is in the instant matter. The observations made regarding there being no unit or office of the PDIL in Delhi, are being referred to by this Court as well. There is no office of the respondents at Delhi which may fall within the territorial jurisdiction of this Court.

24. Reference is also made to the observations of the Madhya Pradesh High Court in ***Nirman Sarkar vs. Canara bank and Ors.*****, WP No.11116/2021** decided on 23rd August 2022**,** which are reproduced hereunder:-

"6. The issue as regards the territorial jurisdiction has been summarized by the Apex Court. Kusum Ingots (supra) the Apex Court in Paragraph No. 27 held as under:

27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place

and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

7. The Apex Court has also considered the judgment in the case of Lieutenant Colonel Khajoor Singh Vs. Union of India reported in MANU/SC/0039/1960 : AIR 1961 SC 532. In the case of Khajur Singh (supra), the Apex Court observed that the jurisdiction of High Court does not depend on the residence/location of the person. In the case of Khajoor Singh in paragraph No. 16, the Apex Court has held as under:

"The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept of the place of cause of action be introduced into it for that would do away, with the two limitations on the powers of

the High Court contained in it."

> *8. In the light of above decisions if the claim of petitioners is examined, the same reveals no part of cause of action accrued within the territorial jurisdiction of this Court. Mere being residence of Jabalpur does not extend right to petitioner to file this petition before this Court. The other judgments relied upon by the petitioner are distinguishable having no applicability to the facts of the case in hand."*

25. In the instant petition as well, the original authority as well as the appellate authority both were constituted and made their respective reports and orders at Jharkhand. The petitioner could not have approached this Court merely for the reason of being a resident of Delhi and falling within the territorial jurisdiction of this Court.

26. The bare language of Article 226 of the Constitution of India is reproduced hereunder to highlight the powers and extent of the powers that this Court has while exercising writ jurisdiction:-

> *"**226. Power of High Courts to issue certain writs.***
>
> *(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*
>
> *(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.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

> *(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*
>
> *(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.*

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

27. Under Article 226 of the Constitution of India, the power to issue writ is with respect to any person, authority or any Government which falls within the territory of a High Court. The jurisdiction of the High Court also extends to matters where the cause of action arises, whether wholly or in part. Hence, it is clear that the power to exercise writ jurisdiction has its own limitations. These limitations would also apply to the case at hand as it would to any other matter before this Court under Article 226.

28. The first situation under which this Court can exercise its jurisdiction is when the person or authority to which the writ is to be issued, is falling within the territory of this Court. The petitioner herein is seeking issuance of writ against an authority, that is, the PDIL, which does not have any office, much less its registered office, in Delhi. The order of penalty which has been assailed before this Court was passed in Jharkhand after enquiry proceedings and the report thereto was made in Sindri, Jharkhand. Hence, the respondent no. 2 and 3, as representatives of the PDIL, are not amenable to the jurisdiction of this Court. Therefore, the instant matter does not satisfy the condition under Article 226 (1) of the Constitution of India.

29. The second condition under Article 226 (2) of the Constitution extends the writ jurisdiction of this Court to matters where cause of action has arisen within the territory of this Court. The petitioner was posted at Sindri, Jharkhand at the relevant time which the charges leveled against the petitioner pertain to. The enquiry proceedings against the petitioner were initiated at Jharkhand, the entire enquiry was conducted at

Jharkhand and even the report made and the punishment imposed upon the petitioner was also at Jharkhand. All of the necessary cause of action arose within the territory of Jharkhand and not Delhi. The second alternative condition for exercise of writ jurisdiction under Article 226 also does not arise in favour of the petitioner and with this Court.

30. Therefore, the case of the petitioner does not lie in either requirement of writ jurisdiction under Article 226 of the Constitution of India. The petitioner does not have any *locus* to approach this Court invoking its writ jurisdiction when neither the respondent is amenable to its jurisdiction nor has any cause of action arisen within its territory.

31. It is found after referring to the combined reading of the judgments as aforementioned, as well as the law pertaining to exercise of jurisdiction under the Constitution of India, this Court finds force in the arguments made by the respondent. It is found that this Court is not the appropriate forum to adjudicate upon the challenge to the order inflicting punishment dated 16th January 2003.

32. Accordingly, without going into the merits of the case, this Court finds that the instant petition is not maintainable for the want of jurisdiction and hence, the same is dismissed.

33. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 30, 2022
gs/ms