

AFR
Court No. 2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 515 of 2010

Friday this the 8th day of December, 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt. Gen. Gyan Bhushan, Member (A)

Shyam Sunder son of Shri Ranaram, Ex Sepoy/Nursing Assistant No. 13998848W, 436 Field Ambulance. Resident of Village- Mem Nagar, Tehsil- Asiyana, Distt.- Jodhpur, Rajasthan.

...Petitioner

By Legal Practitioner: Shri PN Chaturvedi, learned counsel
for the petitioner.

Versus

1. Union of India through Secretary, Chief of the Army Staff, New Delhi.
2. Secretary Defence Staff, South Block, New Delhi.
3. The General Officer Commanding In-charge, Headquarters, Southern Command, Pune (Maharashtra).
4. Officer Commanding, 436 Field Ambulance, C/o 56 APO.

..... Respondents

By Legal Practitioner: Dr Shailendra Sharma Atal, Learned
counsel for the Central Government
assisted by Maj Rajshri Nigam,
Departmental Representative.

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. Initially, the Writ Petition No. 5786 of 2007 was filed before the Hon'ble High Court of Judicature at M.P. Jabalpur Bench, Gwalior. Subsequently, after creation of the Armed Forces Tribunal, Lucknow Bench, this T.A. has been transferred to this Tribunal vide order dated 14.10.2009 and registered as Transferred Application No. 515 of 2010.
2. This T.A. was dismissed in default on 24.11.2015 and it was, subsequently, restored vide order dated 04.09.2017. In between this Regional Bench of Armed Forces Tribunal was created and at the time of creation of this Bench, Jabalpur was Circuit Bench of this Tribunal. However, in May 2016, the Jabalpur Regional Bench of Armed Forces Tribunal, got its independent status.
3. By means of this Writ Petition, the petitioner had challenged his punishment which was inflicted to him by the Summary Court Martial and has made the following prayers:

“ 1. यह क, या चकाकार की रिट या चका को मान्य कया जाकर प्रश्नाधीन आदेश (अननेक्सर पी.1 व अननेक्सर पी.2) मे संसोधन कया जाकर य चकाकार को सेवा से पृथक कर गए दंड को निरस्त कया जाकर य चकाकार को सेवा मे बहाल कये जाने की अज्ञा प्रदान कया जावे /

2. प्रकरण मे परमादेश रिट (Mandamus) अथवा उत्प्रेषड रिट (Certiorary)/ आदेश या निर्देश प्रदान कया जावे जो प्रकरण मे न्यायो चत/आवस्यक हो/

3. अन्य सहायता जो न्यायो चत हो वह भी स्वीकार कया जावे”

4. Ld. Counsel for the respondents has challenged the territorial jurisdiction to this Tribunal. It is submitted that neither the cause of action nor any part thereof has arisen within the territorial jurisdiction of this Tribunal nor

after dismissal, the petitioner is residing within the territorial jurisdiction of this Tribunal. Hence, this Tribunal has no jurisdiction to entertain this case.

5. We have heard the learned counsels for the parties on this point at length. The submission of the learned counsel for the petitioner is that by virtue of Rule 6 of Armed Forces Tribunal Procedure Rules, 2008, the cause of action has arisen within the territorial jurisdiction of this Tribunal because after completion of the Court Martial Proceedings, entire record is submitted in the record office of Lucknow and the officer who is in-charge of such record has the power to review the punishment inflicted by the competent authority.

6. *Per contra*, Ld. Counsel for the Respondents has said that even if it is assumed for the argument sake only, that the person who is the custodian of the record has the power to review the sentence but applicant has nowhere made any prayer before such authority to exercise his power of review. Therefore, no cause of action has arisen within the territorial jurisdiction of this Court. Therefore, on this score alone, this T.A. deserves to be dismissed.

7. Before proceeding further, we would like to quote Rule 6 of the Armed Forces Tribunal(Procedure) Rules, 2008 which reads as under:-

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

(i) The applicant is posted for the time being, or was last posted or attached; or

(ii) Where the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairperson the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 14 or section 15 of the Act, 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 his retirement,

dismissal, discharge, cashiering, release, removal, resignation 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.”

8. A plain reading of Section 6 (quoted above) makes it abundantly clear that in case where the applicant in active service then the applicant may file O.A. at the place where he was posted or he was last posted or where he is attached and such AFT shall have jurisdiction to try the original application. In case where the cause of action has arisen or part thereof has arisen then O.A. may be filed by the aggrieved person before Armed Forces Tribunal having Territorial Jurisdiction of that place. Sub Section 2 of Section 6 provides that a person who ceased to be in service at the time of filing the original application, he may file his original application with the Registrar of the Regional Bench of Armed Forces Tribunal within whose territorial jurisdiction he ordinarily reside at the time of filing the application. In the instant case, it is admitted fact that the applicant is the resident of Rajasthan with his following address:-

“Shyam Sunder son of Shri Ranaram, Ex Sepoy/Nursing Assistant No. 13998848W, 436 Field Ambulance. Resident of Village- Mem Nagar, Tehsil- Asiyana, Distt.- Jodhpur, Rajasthan.”

9. Learned counsel for the applicant has also not argued that the applicant resides in the State of U.P. within the territorial jurisdiction of the Armed Forces Tribunal, Regional bench, Lucknow. But his submission is that the cause of action has arisen because the records of the Court Martial are finally consigned at Lucknow. Plain reading of this Rule 6 (quoted above) does not confer jurisdiction to the Armed Forces Tribunal of the place within whose local jurisdiction the record is finally consigned. Virtually it has nothing to do with the territorial jurisdiction of the Armed Forces Tribunal as per Rule 6. The question that arisen is whether the place of consignment of the record would constitute any cause of action or part of any cause of action. On this point, we would like to see as to

what cause of action means. Cause of action consists of bundle of facts which give cause to enforce. On this point, we may refer to the pronouncement of the Hon'ble The Apex Court in the *South East Asia Shipping Co. Ltd. V Nav Bharat Enterprises (P) Ltd*, (1996) 3 SCC 443 and *Nawal Kishore Sharma v. Union of India* (2014) 9 SSC 329 which are read as under :-

“Cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.”

10. The larger bench of the Principal Bench of Armed Forces Tribunal has also considered this controversy in *O.A. No. 460 of 2015 Capt G Vivekanand Vs. Union of India* decided on 11 September, 2015, wherein, the larger bench after considering the issue at length has concluded as under :-

“72...(a) Under the Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008, the applicant has statutory right to choose any of the Benches, as per any of the clauses referred under Rule 6, including his legal right to file a lis before, the Bench within whose territorial jurisdiction the cause of action or the part of cause of action has arisen as the lis is covered by any of the clause of Rule 6 of the AFT (Procedure) 2008.

*(b) The Tribunal (Benches of the Tribunal) have no jurisdiction to apply the concept of **form conveniens** against the statutory right of the applicant, the **dominus litis**. The Rule 6 as a whole, in its language and intention is clear and unambiguous. The Tribunal is bound by the mandate of law and is precluded from speculating by first introducing an ambiguity or otherwise.*

(c) The reference is answered as above.”

11. Thus, the finding of the full bench is clear that the applicant being the *dominus litis* has a right of forum selection but such right is restricted only to the benches where under the provisions of rule 6, he has a choice to file the application. Such as where cause of action arisen, or he was last posted or he was posted the place where at the time of filing the application or at a place where he is residing after retirement. Admittedly, none of the above, conditions are in existence in this case to bring the case within the territorial jurisdiction of this Tribunal.

12. The word cause action has not been defined in statute book, but from the definition of the cause of action is clear keeping in view the several pronouncements of the Apex Court in *M/s Kusum Ingots and Alloys Ltd. Vs. Union of India and Ors*, reported in AIR 2004 Vol. VI SCC 254 which reads as under.

“70.....where it has been held that, the cause of action is not defined in any statute but it has 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 judgment of the Court. Negatively put, it would mean that every language which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action then it has been held that, its importance is beyond any doubt. For every action, there has to be cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

13. Keeping in view the afore mentioned definition of cause of action, it was nowhere necessary for the applicant to prove that the custodian of the record in Lucknow had the power of review. Virtually this aspect has concern with the lis involved in this case, particularly, when the applicant has admittedly not made any effort to invoke such power of review. In view of the discussion made above, this T.A. is not

maintainable before this Tribunal and deserves to be dismissed and is hereby dismissed as not maintainable.

14. Registrar is hereby directed to remit the record of this case to Regional Bench, Jabalpur to which this case relates. The applicant has liberty to move the application before the Principal Bench, Armed Forces Tribunal, Delhi for transfer of his case to Rajasthan or anyother Bench of Armed Forces Tribunal.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: December , 2017.
RPM/-