

N.Suresh Vs. the Commandant, Central Industrial Secur

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Court : Andhra Pradesh

Decided On : Sep-18-2012

Judge : Nooty Ramamohana Rao

Appellant : N.Suresh

Respondent : The Commandant, Central Industrial Secur

Advocate for Pet/Ap. : Sri. J.M.Naidu

Judgement :

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO WRIT PETITION NO.

15303 OF 200.18-09-2012 N.Suresh The Commandant, Central Industrial Security Force, Ministry of Home Affairs, N.F.C., ECIL Post, Hyderabad 62 and 3 others
Counsel for the petitioner: Mr.J.M.Naidu Counsel for the respondents: Mr.A.Rajasekhar Reddy, Ms.Nanda Standing Counsel for Central Government
?CITATIONS:

1.

AIR 200.SC 359.2.

(1994) 4 SCC 71.ORDER: The writ petitioner challenges the validity of the orders passed by the 3rd respondent - Commandant, Central Industrial Security Force Unit, Hydro Electric Project, Uri, Baramulla District, Jammu and Kashmir State

modifying in turn the orders passed earlier by the Deputy Commandant of the Force at Uri imposing on him a punishment.

He also challenges the validity of the orders passed by the 4th respondent - Deputy Inspector General, North Zone, New Delhi, in rejecting the appeal preferred by the writ petitioner against the orders passed by the Commandant noted supra.

The writ petitioner was recruited as a Constable by the Central Industrial Security Force (henceforth 'Force' in short).

While he was working under the supervision and control of the Force at Hydro Electric Project, Uri, Baramulla District, Jammu and Kashmir State, he was charge-sheeted on 10.8.1995 alleging certain irregularities said to have been committed by him.

After following the necessary process of conducting an enquiry into the two sets of articles of charge framed against him, he was found guilty of both the articles of charges.

The 1st charge relates to the gross dereliction of duty committed by the writ petitioner, in not reporting to duty upon being transferred from CISF Unit, FCI, Gorakhpur to CISF Unit, HEP, Uri, though was relieved accordingly at Gorakhpur on 15.12.1994 (AN) with a direction to report at Uri.

But, however, he has not reported to duty till 10.8.1995.

The 2nd charge alleges that the writ petitioner was unauthorisedly absent from duty after availing joining time after relief at Gorakhpur.

The Deputy Commandant through his order dated 25.9.1997 being the competent disciplinary authority considered it appropriate to award the punishment of reduction of pay by two stages from Rs.900/- to Rs.870/- for a period of two years and further held that during this period he will not earn any increment.

The writ petitioner is obviously happy and content with the compassion shown by a kind hearted disciplinary authority.

But, however, the 3rd respondent - Commandant of the Hydro Electric Project, Uri, being the next superior authority to that of the Deputy Commandant passed final order on 22.1.2001.

Since this order is under challenge for its validity, it will be appropriate to extract the same in toto.

"Office of the Commandant Central Industrial Security Force (Ministry of Home Affairs) CISF Unit HEP Uri Post : Gingle (Mohura) Dist : Baramulla (J & K) not V-15014/CISF/HEP(U)/Disc-34/NS/2001/380 Dated :

22. d January 2001 Sub: Final Order - amendment in operative portion of punishment order --- The operative portion of punishment at para 9 of Final Order not V- 15014/HEP/Disc/97/7260 dated 25-09-1997 in respect of No.

911170025 Constable N Suresh is amended as under : For : `hereby awarded him the punishment of Reduction of pay by two stages from Rs.900/- to Rs.870/- for a period of 2 years to No.

911170025 Constable N.Suresh during this period he will not earn any increment.

Read : `It is ordered that the pay of No.

911170025 Constable N.Suresh be reduced by two stages from Rs.900/- to Rs.870/- in the time scale for a period of two years w.e.f., 25.9.1997.

It is further directed that No.

911170025 Constable N Suresh will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.

Commandant CIST UNIT HEP URI' A perusal of this order clearly discloses that a new clause is added to the order of punishment passed by the Deputy Commandant.

The added portion reads as "that on expiry of this period, the reduction will have the effect of postponing his future increments of pay." In other words, the Commandant has modified the punishment imposed by the Deputy Commandant of reduction of pay by two stages into that of reduction of pay by two stages with cumulative effect.

Normally, an employee whose conditions of service are regulated by the fundamental rules or subsidiary rules framed by the Government of India, earns an increment in the running time scale of pay upon satisfactory completion of 12 months of service.

An increment, otherwise, is granted raising the pay of every employee upon completion of 12 months of satisfactory service as a matter of course, unless the said increment is withheld as a measure of punishment.

When once the pay of the writ petitioner has been reduced in the running time scale from Rs.900/- to Rs.870/- for a period of two years, as a measure of punishment, the effect thereof would be that his pay would remain static for a period of two years at Rs.870/-.

In other words, after completion of first 12 months of satisfactory service, his pay is not liable to be raised by adding an increment of Rs.15/- to Rs.885/- and upon further completion of the next 12 months of satisfactory service to Rs.900/-.

But, however, upon completion of the 24 months currency of the punishment period, his pay would be restored to Rs.900/-.

In effect, during the first 12 months, he would be denied the benefit of drawing Rs.180/- (i.e., Rs.15 x 12) and during the 2nd year, he would be denied the benefit of Rs.360/- (i.e., Rs.15 + Rs.15 x 12).

In juxtaposition to this, the order passed by the Commandant which renders the punishment of reduction of pay by two stages with cumulative effect, the pay of the employee after expiry of two years will not be restored to Rs.900/-.

But, however, would continue to be Rs.870/- only.

Thereafter, upon completion of 12 satisfactory months of service, he would earn one increment and his pay would be raised to Rs.885/- and so on thereafter.

The net result is, he would have missed the right to earn two increments for ever.

Normally, reduction of pay with cumulative effect or withholding of increments with cumulative effect will be impacting the individual even beyond one's retirement from service.

Right to receive a higher quantum of pension and higher quantum of gratuity and other terminal benefits such as encashment of leave will get impaired to the corresponding extent.

In view of the gravity of the impact that this kind of punishments would leave upon the career progression of an employee, reduction of pay with cumulative effect or withholding of increments with cumulative effect, have come to be recognized as major punishments.

It is important to notice that the Commandant has passed the order on 22.1.2001.

It is an order passed in suo motu exercise of power.

It was not preceded by any show-cause notice issued to the petitioner.

He was not heard for any possible objection from his side before this order was passed.

This order of the Commandant of Uri, has been communicated to the petitioner while he was working at CISF Unit, NPC, Kaiga, Karnataka State.

The writ petitioner appears to have initially preferred on 13.10.2003 an appeal against the orders of the Commandant to the DIG of Southern Region as he was working in the Southern Region by then.

That has been rejected by the DIG/DAE on 01.11.2003 as the competent authority to deal with such an appeal was the DIG, Northern Zone at New Delhi.

Thereafter, the petitioner appears to have taken up the matter by way of appeal to DIG, Northern Sector, New Delhi on 25.12.2003.

Complaining that the said appeal has not been disposed of, the petitioner appears to have instituted WP No.

7786 of 2004 in this court which case was decided on 26.4.2004 directing the DIG, Northern Zone, to dispose of the appeal filed by the petitioner within two months from the date of receipt of the order passed in the said writ petition.

It appears even before the said WP No.

7786 of 2004 could be disposed of by this court, the Deputy Inspector General, Northern Zone, has dealt with the appeal preferred by the writ petitioner and passed final orders on 5.4.2004 and directed the same to be communicated to the petitioner through the Commandant, CISF Unit, NFC, ECIL Post, Hyderabad, where the petitioner was working at that point of time.

As was noticed supra, it is the order passed by the Commandant, Uri Sector on 22.1.2001 which was confirmed by the DIG, Northern Zone, on 5.4.2004, that was challenged in this writ petition.

Heard Sri J.M.Naidu, learned counsel for the petitioner and Ms.S.Nanda, learned Additional Central Government Standing Counsel for the respondents.

With a view to constitute and regulate an armed force of the Union for securing better protection and security of industrial undertakings owned by the Central Government and certain other industrial undertakings and for matters connected therewith, the Parliament enacted the CISF Act, 1968, Act No.

50/1968 henceforth referred to as 'Act'.

In terms of Section 3 of the Act, the Central Government has been empowered to constitute and maintain an armed force to be called CISF.

In terms of Section 10 of the Act, it shall be the duty of every member of the Force to promptly obey and execute all orders lawfully issued to him by his superior

authority and to protect and safeguard the industrial undertakings owned by the Central Government together with such other installations as are specified by that Government.

Extraordinary powers have been conferred upon the members of the Force to affect arrest any person without any order from a Magistrate and without a warrant, under Section 11 and similarly to carry out operations of search as well.

Section 15 makes it clear that every member of the Force shall be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

Section 22 of the Act confers powers on the government to make rules for carrying out the purposes of this Act and notify the same.

Accordingly, Central Industrial Security Force Rules, 1969, have been framed.

These Rules, hence, are liable to be treated as if, they are a part of the statute itself.

Rule 31 listed out the various penalties which may be imposed on a Member of the Force, for good and sufficient reasons.

It would be absolutely necessary to notice the list of punishments which were authorized to be imposed in clauses (a) to (h) thereof.

(a) dismissal; (b) removal; (c) compulsory retirement; (d) reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time scale of pay; (e) withholding of increment or promotion; (f) removal from any office of distinction or deprivation of special emolument; (g) fine to any amount not exceeding 7 days' pay; (h) censure.

Clause (d) of Rule 31 clearly indicates that the punishment of reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time scale of pay can be imposed.

That is exactly what the Deputy Commandant has done by his order dated 25.9.1997.

He has reduced the pay of the petitioner to a lower stage from Rs.900/- to Rs.870/- in the time scale of pay.

Clause (a) to (h) have not specified reduction of pay or withholding of increments with cumulative effect as one of the punishments there.

Rule 40 specified that that in case of imposing the punishment of withholding of increment, the order was required to state the period for which the increment is to be withheld and whether it shall have the effect of postponing future increments.

But, however, it is contended that, it is clause (e) of Rule 31 which listed out the punishment of withholding of increment as a punishment where as reduction of pay to a lower stage in the time scale has been included in clause (d) and consequently Rule 40 will not have any effect or impact on such a punishment and Rule 40 will be attracted only when the punishment specified in Rule 31(e) is imposed.

Hence, Rule 40 cannot be read in conjunction with Rule 31(d), for, there is a primary distinction between both the sets of punishments.

Rule 31(d) listed out various dissimilar punishments which do not bear any connectivity with each other.

For instance, it talks of reduction to a lower class or grade or rank.

If a person is reduced from one superior class to a lower class, it is normally understood as a punishment of reversion.

Similarly, within the same class, if there is more than one grade, one can also be reverted from one superior grade to another inferior grade.

Such as reduction from selection grade to an ordinary grade or from Senior Administrative grade to Junior Administrative Grade.

Similarly, reduction to a lower rank is commonly understood as losing a higher rank in a seniority list or gradation list.

In case of Armed Forces such as CISF, reduction from the rank of an Inspector to a Sub-Inspector or from the rank of a Sub-Inspector to an Assistant Sub-Inspector will also fall within this type of punishments, as it amounts to reduction in rank.

Whereas reduction to a lower time scale or to a lower stage in the time scale of pay, will not impact or bring about any change in the status of the employee concerned.

He will continue to occupy the same status, grade and ranking position in the service.

But, he will start receiving reduced pay and emoluments.

Therefore, Clause (d) of Rule 31, comprises of several varieties of punishments that have been conceived and contemplated.

They are broadly as varying as a reversion, to losing an advantageous position in the seniority list or merely suffering financial loss.

Therefore, not all these punishments will have any relationship to the 'concept of cumulative effect'.

Only in case of reduction of pay to a lower stage in the time scale of pay will have some relationship or inter-play with the concept of cumulative effect while the remaining punishments specified in clause (d) of Rule 31 will have no such interplay.

In contrast, stoppage of increments ordinarily will only prevent an employee from enjoying the benefit of increased emoluments upon completion of every 12 months of satisfactory service.

His pay will remain static for a while.

In that context, the competent authority can have discretion to determine as to whether the benefit to realize the increments which were withheld should be restored after a specified period or not at all.

Hence, Rule 40 is intended to have effect or inter-play wherever the punishment of stoppage of increment in clause (e) of Rule 31 is invoked.

Equally, when the punishment of reduction of pay, as provided for in Rule 31(d), is imposed also, a question arises as to whether such an employee can be allowed to earn increments during the currency of the punishment.

In deciding this aspect of the matter, which is a necessary concomitant and off shoot of the punishment of reduction of pay, also the competent authority can exercise the discretion vested in him and specify whether the punishment of reduction of pay is with or without cumulative effect, as set out in Rule 40.

Rule 42 provided for preferring an appeal against any order imposing any of the penalties specified in Rule 31.

Rule 49 is of significance for our scrutiny and it reads as under: "49.

Revision.- (1) Any authority superior to the authority making the order may, suo motu, if it considers necessary, revise an order, original or appellate, passed by such lower authority which comes to his notice within a period of one year from the date of the order.

(2) The revising authority may remit, vary or enhance the punishment imposed or may order a fresh inquiry for the taking of further evidence in the case as it may consider necessary.

(3) The provisions of rule 47 relating to appeals shall apply so far as may be to such orders in revision." It therefore emerges that the suo motu power for revising any order passed by the original or appellate authority is to be exercised within a period of one year from the date of the order.

The Rule making authority has consciously provided that the suo motu power is to be exercised within a period of one year from the date of the order.

That is the limitation conceived under the rule.

Suo motu power is conferred, at the first place, upon the superior authority for securing the ends of justice.

If too harsh or too lenient a punishment is imposed by the competent disciplinary authority or the appellate authority, such superior authority can exercise its discretion and revise such an erroneous order, as, while a harsh punishment would demoralize the employees, too lenient punishment is incompatible to the much required discipline amongst work force.

Therefore, a careful balance has got to be maintained so that there will not be violent drift in equilibrium.

Hence, Rule 49(2) clearly specified that the superior authority can either vary or enhance the punishment imposed or even may order for a fresh enquiry for taking further evidence in the case.

Any such power can be exercised only within the time frame specified.

In the instant case, the order of the Deputy Commandant was passed on 25.9.1997 whereas the Commandant has exercised the suo motu power available to him nearl

1. 2 years later, on 22.1.2001.

By no stretch of imagination, this can be said to be reasonable exercise of power.

In this context, it would be appropriate to notice the judgment rendered by the Supreme Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham v.

K.Suresh Reddy and others¹ wherein the Supreme Court was called upon to determine the contours/limits of exercise of power by the Collector in terms of sub-section (4) of Section 50-B of the Andhra Pradesh (Telangana) Area Tenancy and Agricultural Lands Act, 1950.

Section 50-B(4) of that Act conferred suo motu power on the Collector, 'at any time' to call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under the said Section for purpose of satisfying himself as to legality or propriety of such certificate or as to the regularity of such proceeding or pass such order in relation thereto as he may think fit.

In paragraph (9) of the said judgment, the Supreme Court has clearly held that use of words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suo motu power would be exercised reckoning or starting from a particular date advisedly and contextually.

But, however, it was held that exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed to be so reckoned from a particular date.

But that does not mean that exercise of power "at any time" should not be unguided and arbitrary.

In that view the words "at any time" must be understood as within a reasonable period of time depending upon facts and circumstances of each case in the absence of a prescribed period of limitation.

It is therefore clear that even when a statute confers suo motu power to be exercised "at any time", such exercise is held as liable to be carried out within a reasonable period of time.

In the instant case, the rules have prescribed a period of one year for exercise of suo motu power of revision by the superior authority.

Even if this period of one year is to be construed as merely directory, but not in absolute terms, even in such circumstances, the suo motu power should be exercised in proximate closeness of such a period, which can be a reasonable one.

When the rule making authority has chosen to prescribe one year period, a further period of one year can be construed as the maximum reasonable period for exercise of suo motu power.

Therefore, suo motu power of revision cannot be exercised beyond 2 years period.

I am conscious that while administering a large force like that of CISF, all orders of punishments imposed by the competent disciplinary or appellate authorities may not be processed to the next superior authorities as a matter of course or routinely and consequently the superior authorities may not be posted with all such developments on a regular basis.

Hence, the superior authority may not come to know of such orders within that one year period of time, for an occasion to arise for him to consider the need to exercise suo motu power of revision.

But, however, that factor alone cannot enlarge the time span indefinitely for exercise of power.

In these set of circumstances, I am clearly of the view that exercise of power by the Commandant of the CISF in the instant case on 22.1.2001 which is more than three years after the original authority has passed the orders is beyond the reasonable period for exercise of suo motu power and hence the said order of the Commandant and as well as the order passed by the DIG, Northern Command, rejecting the appeal preferred there against are liable to be set aside.

Further, fundamentally, the Commandant could not have validly passed any order under Rule 49 without putting the petitioner on notice and without hearing his objection.

In spite the petitioner taking such a plea in his appeal, the appellate authority ignored it completely.

Hence, for sheer violation of principles of natural justice, the order of the Commandant cannot be sustained.

Further, the Appellate authority prefers to describe the orders passed by the Commandant as a mere correction but not a revision.

This argument ignores the distinction between a punishment of reduction of pay non-cumulative and the reduction of pay with cumulative effect and thus leaving a cascading effect on the petitioner.

Therefore, the plea in this regard is meritless.

However, the respondents have raised an objection about the maintainability of this writ petition on the ground that this court does not have territorial jurisdiction, as no part of cause of action arose in the State of Andhra Pradesh.

They have placed reliance upon the judgment rendered by the Supreme Court in *Oil and Natural Gas Commission v.*

*Utpal Kumar Basu and others*².

"Cause of action" implies a right to sue.

The material facts, which are imperative for the suitor to allege and prove, constitute the cause of action.

Cause of action is not defined in any statute.

It has, however, been judicially interpreted, *inter alia*, to mean 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.

Cooke v Gill [(1873) 8 C.P.

107].

Negatively put, everything which, if not proved, gives the defendant an immediate right to judgment, would be a part of the cause of action.

(*Kusum Ingots & Alloys Ltd.*

v.

Union of India :

2004. 186)ELT3(SC) : AIR 200.SC 2321.Swamy Atmananda v.

Sri Ramakrishna Tapovanam : AIR 200.SC 239.).

In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the action.

In the wider sense, it means the necessary conditions for the maintenance of the proceeding including the alleged infraction.

[Rajasthan High Court Advocates Association v.

Union of India:

2001. (134) ELT 59.(SC) : AIR 200.SC 126..

"Cause of action" is the bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant.

Bloom Dekor Limited Vs.

Subhash Himatlal Desai and Ors.

- [1995] 82 CompCas 591 (SC), JT 1994(6) SC 89.1994(4) SCALE 60 (1994) 6 SCC 322.[1994] Supp (3) SCR 322.

Each and every fact pleaded does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case.

Facts which have no bearing on the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned.

(Union of India v.

Adani Exports Ltd.

:

2001. (134) ELT 59.(SC) National Taxtile Corporation Ltd.

: AIR 200.SC 199.).

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person.

(Navinchandra N.

Majithia v.

State of Maharashtra : AIR 200.SC 296.; Y.

Abraham Ajith v.

Inspector of Police :

2004. Cri LJ 4180).

Osborne's Concise Law Dictionary defines "cause of action" as the fact or combination of facts which give rise to a right of action.

Black's Law Dictionary defines the expression "cause of action" to mean the fact or facts which give a person a right to judicial relief.

In Stroud's Judicial Dictionary, a cause of action is stated to be the entire set of facts that give rise to an enforceable claim.

In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action", in common legal parlance, is existence of those facts, which give a party a right to judicial interference on his behalf.

Navinchandra N.

Majithia v.

State of Maharashtra & Ors 2000 AIR (SC) 2966 : (2000) 7 SCC 640.

In Halsbury's Laws of England (4th Edn.), the expression "cause of action" is explained as : 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person.

The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse.

'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

"Cause of action" has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff.

It refers entirely to the grounds set forth in the plaint as the cause of action or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.

In determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts.

In other words, the question whether a High Court has territorial jurisdiction must be answered on the basis of the averments made in the petition, the truth or otherwise thereof being immaterial.

(Chand Kour v.

Partab Singh ILR (1989) 16 Cal.

98, Oil and Natural Gas Commission v.

Utpal Kumar Basu :

1994. (4) SCC 71.).

"Cause of action" is not limited to the actual infringement of the right sued but includes all the material facts on which it is founded.

(A.B.C.

Laminart (P) Ltd.

v.

A.P.Agencies : [1989] 2 SCR 1.

Cause of action must be revealed in the pleadings and the pleadings alone should be looked into to know whether cause of action, or a part of the cause of action, arose within the jurisdiction of a court.

(Syed Saleema Bee v.

Smt.Syed Noorjahan :

2006. (2) ALD 721).

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) 'cause of action' means every fact which it is necessary to establish to support a right to obtain a judgment.

Sadanandan Bhadran Vs.

Respondent: Madhavan Sunil Kumar - (1998) 6 SCC 514.

It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law.

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.

South East Asia Shipping Co.

Ltd.

Vs.

Respondent: Nav Bharat Enterprises Pvt.

Ltd.

and Ors.

(1996) 3 SCC 443.

The expression "cause of action" has acquired a judicially settled meaning.

In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action.

In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself.

Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.

The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

Hari Shankar Jain vs.

Sonia Gandhi (2001) 8 SCC 233.

Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises 'cause of action'.

Rajasthan High Court Advocates Association Vs.

Union of India & Ors.

- (2001) 2 SCC 294.

It is true that the petitioner has not bothered much to raise, even formally, a pleading that a part of cause of action has arisen within the State of Andhra Pradesh for him to maintain this writ petition nor did the learned counsel strain himself to neutralize the plea of the respondents.

It is true that merely because a suitor is residing in a particular State, he cannot seek to initiate proceedings under Article 226 of the Constitution of India in a High Court situate in that State provided no part of cause of action has arisen within the territorial limits of the said State.

That is the principle now set at rest by the Supreme Court in ONGC v.

Utpal Kumar Basu's case (supra).

In the instant case, the original order of punishment was undoubtedly passed at Uri in the State of Jammu and Kashmir and that order was interfered with by the Commandant situate at Uri in the same State.

But, however by the time the order came to be passed by the Commandant, the petitioner has moved out of the State of Jammu and Kashmir, upon transfer.

He was working in the State of Karnataka whereat he was communicated the order of the Commandant.

The order of the Commandant is an appealable order in terms and in accordance with Rule 42 read with Rule 44.

An appeal would lie to the DIG.

Rule 44 required that every appeal shall be submitted to the authority which made the order appealed against, provided that if such authority is not the head of office under whom the appellant may be serving, the appeal shall be submitted to the

head of such office who shall forward it forthwith to the said authority.

Rule 45 contemplated situations where the appeal can be withheld.

Rule 46 then commanded the authority which made the order appealed against to transmit the appeal to the appellate authority, together with his comments thereon and the relevant records.

Rule 47 provided complete guidance to the appellate authority as to the manner in which the appeal has got to be dealt with.

Hence, the petitioner has preferred an appeal initially to the DIG, Southern Region of the Force at Chennai, who returned his appeal and directed him to submit the same to the appellate authority viz., DIG, Northern Region at New Delhi.

Accordingly, the appeal has been submitted, through proper channel, in accordance with the proviso to Rule 44, i.e., through the Commandant of CISF Unit, Nuclear Fuel Complex (NFC), Hyderabad, as the petitioner was working in the State of Andhra Pradesh.

After considering the appeal preferred by the petitioner, the order of the appellate authority was also communicated to the petitioner while he was working within the State of Andhra Pradesh.

The order passed by the Commandant therefore has merged with the order of rejection of appeal by the DIG, Northern Region, New Delhi.

The said appellate order has been passed duly considering the appeal preferred when the petitioner was serving within the State of Andhra Pradesh.

Hence, it will be difficult to hold that no part of cause of action has arisen within the State of Andhra Pradesh.

Further, when Rule 42 provided for an appeal, the petitioner could not have moved a petition under Article 226 of the Constitution without exhausting such an alternative remedy.

Therefore, preferring an appeal against the orders of the Commandant of Uri Sector is so essential and integral to institute this writ petition and such an appeal emanated from Hyderabad.

For the aforementioned reasons, the petitioner succeeds in this writ petition.

The writ petition is allowed.

No costs.

----- JUSTICE NOOTY RAMAMOHANA RAO
18.09.2012

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