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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : May-27-2014

Judge : R.C. Mishra, Member & the Honourable Mr. Lt Gen S.K. Singh, Member

Appeal No. : OA No. 267 of 2014 With MA No. 298 of 2014

Appellant : Lt Col Vinod Kumar Mudgal

Respondent : Uoi and Others

Judgement :

1. In view of the objection raised by the Registry, heard on the question of territorial jurisdiction.

2. This is an OA, under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs:-

1) Declaration to the effect that the ACRs in question are technically invalid,

2) Quashment of the result of No 3 Selection Board qua the petitioner and

3) Direction to consider the case of applicant by No. 3 Special Review (Fresh) Selection Board and in the event of his being declared fit for promotion to grant all consequential benefits including no loss of seniority.

3. Admittedly, the petitioner is presently posted as a Lt.Col. at Meerut Cantt. and none of the ACRs was recorded or reviewed at New Delhi.

4. Learned counsel for petitioner, has strenuously contended that the order dated 04.02.2013 (Annexure A-1) rejecting the statutory complaint made by him against the non-empanelment and technically invalid ACRs, constituted a part of cause of action in terms of Rule 6(1)(ii) AFT (Procedure) rules 2008, as it was passed by the Respondent no.1 Union of India in the Ministry of Defence, at New Delhi only. According to him, for the purpose, an analogy may be drawn from Article 226(2) of the Constitution of India. To buttress the argument, implicit reliance has been placed on decision of the Apex Court in M/s Kusum Ingots and Alloys Ltd. Vs Union of India and another AIR 2004 SC 2321. Reference has also been made to the order passed by a co-ordinate Bench of this Tribunal in GS Ahluwalia Vs UOI and Ors (OA No 316/2013 decided on 10.02.2014).

5. Relevant extract of the judgment in Kusum Ingots case, as contained in paragraph 25, reads:

25. The said decision viz. Nasiruddin v. State Transport Appellate Tribunal AIR 1976 SC 331 is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.?

6. However, in that case (above), the Supreme Court also sounded a note of caution in the following terms:

œWe must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.?

7. Further, in *Ambika Industries Vs Commissioner of Central Excise*, (2007) 6 SCC 769, Honble Justice SB Sinha, who authored the judgment in the case of *Kusum Ingots*, had the occasion to explain the ratio as under:-

28. Before the High Court, the decision of this Court in *Kusum Ingots and Alloys Ltd. v. Union of India*¹² wherein one of us was a member, was strongly relied upon. Therein, this Court while construing the provisions of Clause 2 of Article 226, held: (SCC pp. 262-63, para 25)

œ29. The decisions operating in the field, which have been taken note of in *Kusum Ingots and Alloys Ltd.*¹² would clearly go to show how the situs doctrine had been given a go-by by making constitutional amendments. At one point of time writ petitions against the Union of India were being filed only before the Punjab and Haryana High Court as the said Court exercised territorial jurisdiction over Delhi, which was the seat of the Central Government. Experiencing difficulties, Clause (1-A) of Article 226 was introduced. The Constitution again underwent a change by way of insertion of Clause 2 of Article 226. *Bombay Snuff*¹ has been followed by the Karnataka High Court in *Big Apple Computers v. Commr. of Customs and Central Excise*¹³ wherein it was held: (ELT pp. 38-39, para 10)

œ10. This judgment clearly applies to the facts of this case. We also see a subsequent judgment of the Delhi High Court *Bombay Snuff (P) Ltd. v. Union of India*¹. In the said case, the High Court was considering as to whether in terms of Section 35-G(3) of the Central Excise Act the Delhi High Court could consider the appeal filed by the assessee. The tribunal in para 6 noticed as under: (ELT p. 266)

6. The only difference in the legal position that existed at the time the above decision was rendered and the position that prevails today is that instead of the law envisaging a reference from the tribunal to the High Court, the law now provides for an appeal from every order passed by the Appellate Tribunal. That difference does not however affect the reasoning underlying the view taken by this Court in regard to its jurisdiction to entertain a petition under Section 35-G. If a petition seeking reference under Section 35-G was not maintainable in this Court, there is no reason why an appeal under the said provision after its amendment

can be said to be maintainable. On the reasoning adopted by this Court in Technological Institute of Textile case⁹ an appeal under Section 35-G must also be filed only in the High Court who has jurisdiction over the authority from whose order the proceedings have originated. The fact that the main seat of CESTAT is situated in Delhi or that the appeal was heard and decided at Delhi would not mean that all appeals arising from cases so decided regardless from which State the case has originated can be maintained in this Court. ?

30. In *Nasiruddin² and Kusum Ingots and Alloys Ltd.*¹² the Court was not dealing with a question of this nature. Therefore, the same are not authorities for the proposition that the High Court, which is situated at the same place as the situs of the tribunal, alone will have jurisdiction. If the cause of action doctrine, as analysed hereinbefore is given effect to, invariably more than one High Court may have jurisdiction, which is not contemplated.?

8. Thereafter, a five judge Bench of Delhi High Court in *M/s Sterling Agro Industries Ltd Vs UOI* {WP(C) No. 6570 of 2010 decided on 01.08.2011} upon a conspectus of all the leading decisions on the subject including the one rendered in the case of *Kusum Ingots* proceeded to hold that

œ(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of *Alchemist Ltd.* (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the

appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the facts in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries (supra)* and *Adani Exports Ltd. (supra)*.

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Company Limited (supra)* that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens? is not correct.?

9. In the light of the decision in *M/s Sterling Agros* case, a Division Bench of the Delhi High Court in the case of *Hav Venkatagireppa Vs UOI and Ors* {WP(C) No 57/2012 decided on 23.01.2012} has already concurred with the view taken by this Tribunal that mere rejection of the Statutory Complaint against the adverse ACRs, which were neither written nor reviewed within the territorial jurisdiction of this Tribunal, would not give rise to cause of action even in part.

10. Faced with such a situation, learned counsel for the petitioner, while pointing out that the Five Judge Bench decision in *Sterling Agros* case was also relied on by the co-ordinate Bench that passed the order in *GS Ahluwalias* case, has further

urged that in case this Bench is inclined to take a view different from the one taken in the case of GS Ahluwalia, it should refer the matter to a larger Bench. In support of the contention, he has cited decision of the Supreme Court in Sub Inspector Ruplal Vs Lt Governor (2000)1 SCC 644.

11. However, we are of the considered opinion that there is no need to refer the matter to a larger Bench. The reasons are two-fold. The first is that an earlier decision rendered by another bench of this Tribunal, in M Sep Jagjit Singh vs UOI and Ors {OA No 151/2009 decided on 23.04.2010}, on the subject, though in different context, still holds the field as the binding precedent. In that case, it was clearly opined that the order of the Chief of the Army / Air /Naval staff of Govt. of India in the matter of conviction, not being the subject of evaluation in OA under section 15 of the Act, would not confer jurisdiction or give rise to any cause of action and as a logical corollary to that the order rejecting the statutory complaint, by itself, would not constitute a part of cause of action. The second reason is that GS Ahluwalias case is based on a different set of facts whereas the decision in the case of Hav Venkatagireppa is squarely applicable to the facts of the instant case.

12. We, therefore, conclude that no cause of action has arisen even partly within territorial limits of jurisdiction of the Principal Bench and order that the OA be returned to the petitioner for presentation to the proper bench.

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