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provide for making of repeated representations. Therefore, we have no hesitation to hold that the Tribunal committed a grave illegality by entertaining and accepting the application filed by respondent No. 2.

(29) The judgment of the Supreme Court in **Sua Lal Yadav versus State of Rajasthan** (*supra*), has absolutely no bearing on the case of respondent No. 2. In that case, the review filed by the appellant under Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules after the expiry of limitation was entertained by the Government and decided on merits. In the backdrop of that fact, their Lordships of the Supreme Court held that the High Court was not right in dismissing the writ petition on the ground that the review was belated. The ratio of that decision cannot be applied to the cases which are governed by the provisions of Sections 20 and 21 of the Act.

(30) In the result, the writ petition is allowed. Order Annexure P-34 is quashed and OA No. 1066/CH of 1997 filed by respondent No. 2 is dismissed.

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**R.N.R.**

*Before Swatanter Kumar & S.S. Saron, JJ.*

HARVINDER SINGH—*Petitioner*

*versus*

FOOD CORPORATION OF INDIA & OTHERS—*Respondents*

*C.W.P. No. 6386 of 2002*

6th February, 2003

*Constitution of India, 1950—Art. 226—Territorial jurisdiction—Discharge from service—Petitioner remained posted at places falling in the State of Sikkim—Order of discharge issued from New Delhi and addressed to the petitioner through the Zonal Manager, Guwahati—Order communicated/served to the petitioner at his native place in the State of Punjab—Whether receipt of communication of the order confers upon the petitioner a part of cause of action within the territorial jurisdiction of this High Court—Held, no—Service of the*

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*order only confers a right of action—No territorial jurisdiction to entertain the writ petition—Return of the petition for presentation of the same to the proper Court having territorial jurisdiction ordered.*

*Held*, that the petitioner had not served within the territorial jurisdiction of this Court during his service of about two years with the F.C.I. and remained posted in North East Zone of FCI at Gangtok (Sikkim) or Siliguri etc. The impugned order dated 4th April, 2002 of his discharge from respondent Corporation was issued from New Delhi and was addressed to the petitioner through the Zonal Manager (NE), FCI, Guwahati. The order, therefore, is deemed to have been communicated to the petitioner at Guwahati inasmuch as it was out of the reach of the Managing Director, FCI, Headquarters, New Delhi, after it was sent out and whatever action that was required to be taken by the petitioner was at the office of Zonal Manager, FCI, Guwahati. Even the relinquishment of charge and handing over the same was to be done by the petitioner at Guwahati. In these circumstances, the addressing letter dated 12th April, 2002 by the District Office of FCI Kapurthala does not *per se* confer any cause of action on the petitioner within the territorial jurisdiction of this Court. The right of action is a right to enforce cause of action. It is a remedial right for affording redress for the infringement of a legal right. The right of action is a right which gives rise to enforce a cause of action. The actual service of notice is only a mode of conveying the order.

(Para 30)

*Further held*, that the order has been served at the address of the employee where he was on LTC. This would, therefore, only confer a right of action. We are clearly of the view that this Court has no territorial jurisdiction to entertain the writ petition.

(Para 31)

*Further held*, that where this Court has no territorial jurisdiction to entertain the writ petition, the proper course is to return the petition in terms of order VII Rule 10 of the Code of Civil Procedure read with Rule 32 of the Writ Jurisdiction (Punjab and Haryana) Rules, 1976 for presentation to the proper Court having territorial jurisdiction.

(Para 32)

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Rajiv Atma Ram, Senior Advocate with Aman Bahri and  
Madhu Dayal, Advocates, *for the petitioner.*

V. Ramswaroop, Advocate, *for the respondent.*

### JUDGMENT

*S.S. Saron, J.*

(1) The petitioner in the present case seeks quashing of order dated 4th April, 2002, Annexure P-6 in pursuance of which he was discharged from service of the Food Corporation of India respondent No. 1 (FCI for short) during the period of his probation with immediate effect in terms of Regulation 15(3) of the FCI (Staff) Regulations, 1971, (hereinafter referred to as the Regulations).

(2) The facts leading to the case are that the petitioner was selected and appointed as Deputy Manager, FCI,—*vide* appointment order dated 13th March, 2000. He was placed on probation for a period of one year which could be further extended for another period not exceeding one year. The FCI has a system of recording of probation reports every six months for every officer on probation. The reports of the petitioner classified him as 'Very Good' and his integrity as unquestionable. Therefore, he should have been confirmed on expiry of initial period of probation. However, the probation period was extended for six months till 12th October, 2001. It is during the extended period of probation when the petitioner was posted as Deputy Manager, Siligiri, that a charge-sheet dated 28th July, 2001 was issued which was received by him on 9th August, 2001. The petitioner filed his reply and an Enquiry Officer was appointed and first date of enquiry was fixed as 28th December, 2001. The petitioner represented for change of the Enquiry Officer and the Enquiry Officer was changed in February 2002. While the enquiry proceedings were still going on, the petitioner was discharged from service,—*vide* the impugned order dated 4th April, 2002 Annexure P-6. The said order was received by the petitioner at his residential address at Kapurthala,—*vide* order dated 12th April, 2002 Annexure P-6/A. Thereafter, the Enquiry Officer,—*vide* letter dated 15th April, 2002 Annexure P-7 asked the petitioner to submit a list of documents etc. in relation to the departmental enquiry. The petitioner had proceeded on LTC which was duly sanctioned on 8th April, 2002.

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(3) The order of discharge from service during the probation period has been challenged on the ground that the probation reports of the petitioner classified him as 'Very Good' officer and his integrity was unimpeachable. Therefore, the termination being founded solely on the allegations of misconduct, the order though termed to be of innocuous language, in fact is an order of dismissal. Besides, the impugned order is in violation of Regulation 15(3) of the Regulations which enjoins that a directly recruited employee on probation can be discharged from service without assigning any reason by giving him a notice of 30 days or pay and allowances in lieu thereof. Since neither notice nor pay and allowances were given to the petitioner, the order of discharge is vitiated. Besides, it is contended that the period of probation was extended only for six months whereas the order of discharge records that it was extended for further period of one year with effect from 12th April, 2001. In these circumstances, the probation period expired on 12th October, 2001 and by the time the impugned order was passed, the probationary period had expired. The defects, if any, in his service were not put to the petitioner during the period of probation which is contrary to circular dated 5th November, 1979 Annexure P-9. Lastly, that the impugned order had been issued while an inquiry was going on and it was not open to the respondents to dispense with the inquiry by resorting to an alleged innocuous order of discharge during probation period.

(4) Notice in the case was issued to the respondents who have filed reply. In their reply, a preliminary objection has been raised with regard to lack of territorial jurisdiction. It has been contended that this Court has no territorial jurisdiction to try and entertain the present petition as no cause of action or even part of it has accrued to the petitioner within the territorial jurisdiction of this Court. It is averred that the petitioner was appointed on 13th March, 2000 and he was on probation for one year commencing from 12th April, 2000. He was posted as District Manager, Gangtok (Sikkim),—*vide* letter dated 26th April, 2000/1st May, 2000. His probationary period was not satisfactory and the same was extended for another six months,—*vide* order dated 18th May, 2000. The competent authority terminated the service of the petitioner,—*vide* order dated 4th April, 2002 in terms of Regulation 15(3) of the Regulations. It has been stated that right from the date of joining of the petitioner till his termination, he remained posted at places which fell under the jurisdiction of Hon'ble

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Guwahati High Court and not at places falling within the territorial jurisdiction of this Court. On the date of passing the impugned order, the petitioner was posted as District Manager, Agartala and as soon as he came to know of the passing of the order, he proceeded on LTC to his native place at Kapurthala. The order was sent for service on the petitioner through the Zonal Manager (NE), FCI, Zonal Office (NE) Guwahati and then to his Kapurthala address. The same was received by the petitioner at Kapurthala but by that time no cause of action accrued to him to file the present writ petition in this Court. The other averments challenging the order of discharge of the petitioner have been denied. With respect to material particulars, it is admitted that there is a system of recording reports during probation period which are confidential in nature and the petitioner has no access to the same. It is contended that during the period of probation a departmental enquiry was ordered under Regulation 58 of the Regulations which related to the period from 5th February, 2001. The extension of period of probation is also admitted. As regards extension for six months only with effect from 12th April, 2001 is admitted. However, it is stated that in view of circular dated 26th March, 2001, copy of which is Annexure R-1/3, the extension was for one year and not for six months.

(5) We have heard the learned counsel for the parties and have also gone through the record of the case with their assistance.

(6) At the outset, we may consider the question of territorial jurisdiction which has been argued at considerable length by the learned counsel for the respective parties.

(7) Shri V. Ramswaroop learned counsel appearing for the respondents has vehemently argued that this Court has no territorial jurisdiction to entertain the petition inasmuch as no cause of action or part of it has accrued to the petitioner within the territorial jurisdiction of this Court. It is only the order of discharge which was conveyed to the petitioner at Kapurthala which the petitioner avoided receiving at Agartala by proceeding on LTC when he came to know of the order being passed. He also contends that the order is effective from the date of its communication i.e. when it is issued by the authority and it is immaterial when the petitioner actually receives it. It is communication of the order which is essential and not its actual receipt by the officer concerned because till the order is issued and actually sent out, the

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authority making it is in a position to change its mind and modify it but once such an order is sent out of reach, it goes beyond the control of the authority. Therefore, he contends that mere receipt of the order will not confer upon the petitioner a cause of action so as to invoke the jurisdiction of this Court within the meaning of Sub Clause (2) to Article 226 of the Constitution.

(8) On the other hand, Shri Rajiv Atma Ram, learned Senior Advocate appearing for the petitioner contends that part of cause of action had accrued to the petitioner within the territorial jurisdiction of this Court inasmuch as the order of discharge was communicated and received by the petitioner at Kapurthala. Therefore, he had cause of action to file the writ petition in this Court. He also contends that actual receipt of the order is necessary as that would require some positive act on the part of the petitioner to relinquish charge and the doctrine of communication is not applicable in the case of discharge or dismissal as it affects the substantive right of an employee. The order having actually been received by the petitioner at Kapurthala would confer upon him at least part of cause of action within the territory of this Court to set the law in motion. As such the jurisdiction of this Court has been rightly invoked.

(9) The learned counsel appearing for the respective parties referred to various authorities in support of their respective contentions.

(10) Article 226 of the Constitution of India confers on every High Court the power to issue certain writs throughout the territory in relation to which it exercises jurisdiction for the enforcement of any right conferred by Part III of the Constitution and for any other purpose. Clause (2) to Article 226, which is necessary for consideration in the present case, reads as under :—

“(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.” (Emphasis added.)

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(11) A perusal of the above shows that the High Court can exercise jurisdiction in relation to territory within which the cause of action, wholly or in part, arises.

(12) The question that requires to be considered in the present case is whether receipt of communication of the order by the petitioner at Kapurthala would mean that cause of action in part has accrued in his favour within the territorial jurisdiction of this Court. Clause (2) to Article 226 of the Constitution was originally inserted as Clause (1A) by 15th amendment by Amendment Act of 1963 and was re-numbered as Clause (2) by the Constitution's 42nd Amendment Act of 1976.

(13) The term cause of action, as indicated in Clause (2) to Article 226 of the Constitution, also finds mention in Section 20 of the Code of Civil Procedure. A reading of the same would show that where cause of action, wholly or in part, arises has an important bearing on the question of territorial jurisdiction of a Court to entertain a writ petition. Cause of action has been defined by the Courts as 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 constitutes cause of action. It has been held to be a bundle of essential facts and refers entirely to the medial upon which the petitioner asks the Court to arrive at the conclusion in his favour. The nature of the petition or even the form of action is one thing. However, cause of action is another. In the Law Lexicon, Second Edition, 1997, compiled and edited by P. Ramanathaaiya, the term cause of action has been defined as follows :—

“Cause of action, “The elements of a cause of action are :  
First, the breach of duty owing by one person to another : second the damage resulting to the other from the breach.” The commission or omission of an act by the defendant, and damage to the plaintiff in consequence thereof, must unite to give a good cause of action. No one of these facts by itself is a cause of action.”

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(14) It is in this background that it has to be seen whether cause of action has accrued to the petitioner within the territorial jurisdiction of this Court. The petitioner was charge-sheeted and was being proceeded against by way of a departmental enquiry in pursuance of the charge memo dated 28th July, 2001 Annexure P-3. The said charge memo was issued by the respondent—FCI from New Delhi and was addressed by the petitioner through its Senior Zonal Manager, North East Guwahati. The inquiry itself was being conducted at Guwahati. The petitioner also submitted his reply dated 14th September, 2001 Annexure P-5 to the Senior Regional Manager, FCI, NEF Region, Shillong with a request to forward the same to the FCI, Headquarter at New Delhi. Besides, a copy of the same was addressed to the Executive Director (Vigilance), FCI, Headquarters, New Delhi. The petitioner also placed on record various office orders which relate to his transfers and posting at various places. All these orders relate to his posting in West Bengal region or North East region. The impugned order dated 4th April, 2002 Annexure P-6 whereby the petitioner has been discharged from service by the respondents was issued from the Headquarters of the respondent—FCI at New Delhi and is addressed to the petitioner through Zonal Manager, North East Region at Guwahati besides other offices but none of them are situate in the States of Punjab or Haryana. It is the order dated 12th April 2002 Annexure P-6/A which is addressed by the FCI, District Office at Kapurthala to the petitioner at his address at Kapurthala which is within the territorial jurisdiction of this Court. The subject of the said letter dated 12th April, 2002 Annexure P-6/A relates to serving of Headquarters, FCI, New Delhi, FAX order dated 4th April, 2002. It is indicated therein that the order dated 4th April, 2002 which is meant for the petitioner was enclosed and the petitioner was asked to acknowledge its receipt. The petitioner thus contends that since the impugned order dated 4th April, 2002 Annexure P-6 has actually been received by him in pursuance of letter dated 12th April, 2002 Annexure P-6/A, at least part of the cause of action has accrued in his favour within the territorial jurisdiction of this Court and, therefore, he is entitled to invoke the jurisdiction of this Court and claim the relief prayed for.



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(15) In order to deal with this controversy, the judgment of the Hon'ble Apex Court in case titled *State of Punjab versus Khemi Ram (1)*, may be noticed. In the said case, the government servant was on leave preparatory to retirement and an order suspending him from service was communicated by the authority by sending a telegram to his home address before the date of his retirement. It was held by the Hon'ble Supreme Court that order was effective from the date of communication and it is immaterial when he actually received the order. It was observed as follows :—

“An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word communication ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in AIR 1966 SC 1313 (*supra*) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.”

(16) *Khemi Ram's case (supra)* was one of suspension and not of discharge as in the present case and, therefore, actual receipt of order may be necessary in the case of discharge. However, the question still remains is whether that would give a cause of action to invoke the jurisdiction of this Court.

(17) The question as regards jurisdiction earlier to the insertion of clause (1A) subsequently re-numbered as clause (2) to Article 226 of the Constitution, has been of considerable debate. Earlier the

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(1) AIR 1970 SC 214

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Hon'ble Supreme Court in cases of *Election Commission of India* versus *Saka Ventkata Rao*, (2), *K.S. Rashid and son* versus *Income Tax Investigation Commission etc.* (3), *Lt. Col. Khajoor Singh* versus *Union of India and another* (4), and *C.C.C. versus E. IC Ltd.* (5), took the view that it was the residence of the respondent which gave territorial jurisdiction to a High Court to invoke its jurisdiction. The situs of the cause of action or the location of the person affected by the order was inconsequential. This position, however, now is not of much relevance in view of the insertion of substituted clause (2) to Article 226 of the Constitution.

(18) In support of his case, the learned Senior Counsel for the petitioner has relied upon the decisions in the case of *Bachhittar Singh* versus *State of Punjab and another* (6), and *State of Punjab* versus *Amar Singh Harika* (7).

(19) In *Bachhittar Singh's case* it was held that in order to make the opinion of the State Government amount to a decision, it must be communicated to the person concerned. It was held that it is of essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by it. For, until the order is communicated to the person affected by it, it would be open to the Government to consider the matter over and over again. Therefore, till its communication the order cannot be regarded anything more than provisional in character.

(20) In *Amar Singh Harika's case (supra)*, it was observed as follows :—

“We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said

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- (2) AIR 1953 SC 210  
(3) AIR 1954 SC 207  
(4) AIR 1961 SC 532  
(5) AIR 1963 SC 1124  
(6) AIR 1963 SC 395  
(7) AIR 1966 SC 1313

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authority, such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office, and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3rd June, 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May, 1951."

(21) In *Union of India versus Dinanath Shantaram Karekar and others (8)*, the respondent was an employee being an unskilled labour in the Naval Armament Department, Bombay. A charge-sheet was issued to him by registered post which was returned by the authorities with the endorsement "not found". The Hon'ble Supreme Court observed that this could not be legally treated to have been served. In para 10 of the judgment, it was held as follows :—

"Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were even served upon the original respondent. Dinanath Shantaram Karekar. consequently, the entire proceedings were vitiated."

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(22) In *Ex. Cap. Yashpal* versus *Union of India (9)*, a Division Bench of this Court considered the question of jurisdiction. The petitioner in the said case at the relevant time was posted as Captain at Talbhat near Babina in Uttar Pradesh. He went on leave and then sent a telegram for extension of his leave which was granted. Thereafter another request for extension was declined on account of which he over stayed for 60 days beyond the period of leave sanctioned to him. Thereafter enquiry was ordered by serving a charge-sheet containing various allegations. He was found guilty in the enquiry and was ordered to be dismissed from service. The appeal preferred by him was also rejected. A writ petition filed by him in this Court in which objection of jurisdiction was taken inasmuch as the proceedings were initiated beyond the jurisdiction of the Court. This Court in the facts of the case held that after the petitioner had been dismissed, he came to his home town Thanesar in the State of Haryana and he filed a statutory appeal under Section 164 of the Army Act from his home town. Rejection order of his appeal was also received at his home town and in these circumstances, it was held that cause of action accrued to the petitioner within the State of Haryana and, therefore, this Court had jurisdiction as his remedies were pursued from the territorial jurisdiction of this Court.

(23) On the strength of the above, it was argued by Shri Rajiv Atma Ram that communication of the order in fact means its actual receipt and cause of action accrues to the petitioner only on actual receipt of the order in the case of discharge of an employee so as to invoke the jurisdiction of this Court. The essence for giving cause of action it is contended is communication of the order by its actual receipt.

(24) We are, however, unable to agree with the contention of the learned Senior Advocate in the circumstances of the present case. As already noticed above, the petitioner proceeded on LTC after it was sanctioned on 8th April, 2002. The possibility of his being aware of the order of discharge being passed against him cannot be ruled out. Therefore, with a view to avoid its receipt, he proceeded on LTC. Even otherwise the order dated 4th April, 2002 is addressed to the petitioner for delivery through the Zonal Manager, North East Region, at Gowahati. Therefore, it is deemed to have been communicated to him

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after it went out of the hands of the competent authority i.e. the Managing Director of FCI at New Delhi. The actual receipt of the order by the petitioner in the circumstances of the case was not necessary as he had already proceeded on leave. It is also not shown by the petitioner as to what action was required to be done by him on account of his discharge from service. The order of discharge having been communicated and received at the place of posting of the petitioner it became effective and operative. It is this operation of the order which would give a cause of action to the petitioner at the place of his posting. The subsequent correspondence in terms of letter dated 12th April, 2002 Annexure P-6/A is only an endorsement of the communication at Guwahati. The petitioner made no representation from Kapurthala and neither did he take any other positive action from there except for receipt of the letter dated 12th April, 2002 Annexure P-6/A nothing happened at Kapurthala.

(25) This aspect of the matter has been more elaborately considered by a Full Bench of Hon'ble Kerala High Court in *Nakul Deo Singh* versus *Deputy Commandant (10)*. In the said case the petitioner was working as Head Constable in the Central Industrial Security Force at Bokaro and was issued a charge memo. After enquiry a punishment of reduction in rank to the lower post of Naik was imposed till he was found fit by the competent authority to be restored to higher post of Head Constable. The said order was served at Bokaro. He filed an appeal before the Deputy Inspector General at Bokaro which was dismissed. The appellent order was served on the petitioner while he was working as Naik in the Central Industrial Security Force at HHL Kottayam. On receipt of the order he invoked the jurisdiction of the Hon'ble Kerala High Court. In the counter affidavit filed by the respondents a specific plea was raised that cause of action arose outside the territorial jurisdiction of the said High Court and that since no part of cause of action arose within the jurisdiction of the said High Court, the petition was not maintainable. In the other connected petition, the petitioner was a Constable with CRPF posted at Andheria Mor New Delhi and a departmental enquiry was initiated for failing to report on duty after expiry of sanctioned leave. He was dismissed from service,—*vide* order which was received by him at New Delhi. Thereafter he returned to his native place at Trivandrum and he filed an appeal before the Deputy Inspector General, Delhi, which was

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dismissed on the ground that it was belated and the order of the appellate authority was communicated to the petitioner therein at Trivandrum. In this case also the question of jurisdiction arose. the Hon'ble Kerala High Court after considering various judgments of the Hon'ble Apex Court and other High Courts, observed as follows :—

“What really arise for decision is whether the fact that on communication of the order it becomes effective as far as a person is concerned and gives him the right to approach the Court for relief is really a fact which is part of the bundle of facts that constitute a cause of action. It is well recognized that there is a distinction between cause of action and right of action. In American Jurisprudence 2nd Edn. Vol. I at page 541, it is stated as follows :—

“Although the Courts sometimes confuse the terms cause of action and right of action and state that right of action at law arises from the existence of a primary right in the plaintiff and the invasion of the right by some delict on the part of the defendant, in a legal sense, these terms are not synonymous or interchangeable. A right of action is the right to presently enforce a cause of action—a remedial right affording redress for the infringement of legal right belonging to some definite person, a cause of action is the operative facts which give rise to such right of action. Right of action does not arise until the performance of conditions precedent to the action and may be taken away by the running of the state of limitation, through an estoppel, or by another circumstances which do not affect the cause of action. there may be several rights of action and one cause of action and rights may accrue at different times from the same cause.”

The above distinction was—referred to by a Full Bench of the Allahabad High Court in *Balbir Singh* versus *Atmaram*, AIR 1977 All. 211. Their Lordships held that the terms cause of action and right of action are not synonymous and interchangeable. Right of action

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is a right to presently enforce a cause of action—a remedial right affording redress for the infringement of a legal right binding to some definite person; a cause of action is the operative facts which give rise to such right of action. His Lordship Justice Padmanabhan in *Raman Ittiathi versus Pappi Bhaskarn*, 1989 (2)KLT 377, adopted the same approach and noticed the distinction between cause of action and right of action. In *Dayasankar versus Chief of the Air Staff, New Delhi*, AIR 1988 All. 36, a Division Bench of the Allahabad High Court held that a right of action is a right to enforce a cause of action. A person residing elsewhere in the country being aggrieved by an order of Government, Central or State or authority or person may have a right of action at law but it can be enforced or the jurisdiction under Article 226 can be invoked of that the High Court only within whose territorial limits the cause of action wholly or in part arises. Cause of action arises by action of the Government or authority and not by residence of the person aggrieved. In a case where an officer in the Indian Air Force was superseded when he was posted at Madras and he sought a direction by filing a Writ Petition in the High Court of Allahabad to command the appointing authority to decide a representation made by him, it was held that the High Court at Allahabad had no jurisdiction since no cause of action arose within the jurisdiction of the High Court at Allahabad which would entitle that officer to approach the High Court at Allahabad, and the direction was sought to the authority whose office was situate in New Delhi. Following this decision and referring to the earlier decisions on the subject, another Division Bench of the Allahabad High Court in *Brijlal Singh Gautam versus Union of India*, AIR 1988 All. 132, held that illegality in the award of the contract at a situation outside the jurisdiction of the High Court of Allahabad could not be entertained in the High Court of Allahabad merely on the ground that the station where the contract was to be performed fell within the jurisdiction of the High Court of Allahabad.”

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(26) The above observations have elucidated the difference between right of action and cause of action to invoke the jurisdiction of the Court. The receipt of the order in the circumstances of the case at Kapurthala which was communicated to the petitioner at Guwahati at the most would only give to the petitioner a right of action and no cause of action can be said to have accrued in his favour within the territorial jurisdiction of this Court so as to invoke its jurisdiction. In the case titled *Central Bureau of Investigation versus Narayan Diwakar (11)*, considered the question whether the High Court at Guwahati had jurisdiction to entertain and decide the writ petition filed by the respondent before it. The respondent in the said case was an IAS Officer and officiating as Collector as the regular incumbent was on leave. He was transferred to Arunachal Pradesh. However, prior to his transfer three FIRs lodged with the Central Bureau of Investigation containing various allegations of having entered into a criminal conspiracy were registered. After receipt of the FIR a wireless message was sent by the Superintendent of Police, CBI, Anti Corruption Bureau, Bombay to the Chief Secretary Arunachal Pradesh at Itanagar with a request to advise the respondent to meet the Inspector of Police, CBI Anti Corruption Bureau, Bombay in connection with investigation. Being informed about the wireless message, the respondent filed writ petition before the Guwahati High Court with a prayer to quash the FIR which was allowed. It was held by their Lordships of the Hon'ble Apex Court that they had no hesitation to hold that the High Court at Guwahati had no jurisdiction to entertain the writ petition filed by the respondent. The mere receipt of wireless message by the respondent in the said case to meet the Inspector of Police, CBI Bombay was held not to confer jurisdiction on the High Court.

(27) In *Navinchandra N. Majithia versus State of Maharashtra and others (12)*, the aspect of territorial jurisdiction within which cause of action, wholly or partly, arises was considered. It was held that High Court could have jurisdiction if any part of cause of action arises within the territorial limits of its jurisdiction. In the said case a writ petition was filed before the Bombay High Court for quashing criminal complaint filed at Shilong on the ground that it was false and was filed with *mala fide* intention causing harassment and putting pressure therein to reverse the transaction relating to transfer

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(11) 1999(4) SCC 656

(12) 2000(7) SCC 640



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of company shares which had entirely taken place at Bombay. An alternative prayer was made for transfer of investigation to Mumbai Police. The Hon'ble Supreme Court held that Bombay High Court had erred in dismissing the writ petition on the ground that it had no jurisdiction to entertain the writ petition for quashing criminal complaint filed at Shilong. It was held that the High Court had failed to consider all the relevant facts necessary to arrive at proper decision on the question of maintainability of the writ petition on the ground of lack of jurisdiction and that the High Court based its decision on the sole consideration that the complainant had filed a complaint at Shilong in the State of Meghalaya. The ratio of the said judgment would not apply to the facts of the case in hand. In the said case there had been various transactions with respect to the transfer of shares. Besides, the Hon'ble Supreme Court held that the High Court did not take note of the averments that filing of the complaint at Shilong was *mala fide* move on the part of the petitioner to harass and pressurise to reverse the transaction of transfer of shares. Besides the alternative prayer made in the writ petition for transfer of investigation to Mumbai Police was not considered. It was in these circumstances that the High Court at Bombay was held to have jurisdiction to entertain the petition as part of cause of action had accrued within its territory. However, it was also clarified in the said judgment as follows :—

“We make it clear that mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.”

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(28) Therefore, it is evident that question whether cause of action has arisen in the territorial limits of a High Court is to be determined on the facts and circumstances of each case. A learned Single Judge of this High Court in a recent decision in the case of *S.B. Tarlok versus Union of India and others CWP No. 6557 of 2002, decided on 20th November, 2002* considered all the judgments on the question of territorial jurisdiction of the High Court. The petitioner in the said case was granted short service commission in the Electrical, Mechanical and Engineering (for short the EME) Corps of the Indian Army. He was due for permanent commission. However, he was informed that he could not be granted permanent commission as he had been placed in permanent low medical category. The Court of Enquiry was ordered to enquire into the circumstances under which the petitioner had sustained injury on 6th October, 1993 that is if the medical category was due to the result of an injury/casualty while on duty. The Court of Enquiry concluded that the injury suffered by the petitioner was not attributable to the military service. The petitioner dissatisfied with the enquiry filed a statutory complaint. It was the case of the petitioner therein that he was not allowed permanent commission. He would be released from the Army in August, 2002. A detailed written statement was filed where one of the preliminary objections raised was that the writ petition was not maintainable for lack of jurisdiction. It was stated that the Court of Enquiry to investigate the aforesaid injury was finalised at Baroda and the case of the petitioner for grant of permanent commission was considered and finalised at Delhi. Order that was passed on the statutory complaint filed by the petitioner was also issued by the competent authority stationed at Baroda and, therefore, it was held that there was no jurisdiction to entertain the writ petition by this Court. A reference may also be made to Regulation 75 of the Food Corporation of India, (Staff Regulations) 1971, which deals with miscellaneous matters, including service of orders, notices etc. The same reads as under :—

The following procedure shall be followed by the Corporation while serving orders, notices etc. on Corporation's employees :

- (i) Every order, notice and other process made or issued under these Regulations shall, as far as possible, be delivered or tendered to the employees concerned in person ;

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- (ii) Where such order, notice or other process cannot be served personally as at (i) above, the notice etc. shall be served on such employee by Registered Post acknowledgement due at the address of the employee available with the Corporation at the office where the employee was last working or, if he is on leave, as per his leave application particulars, if any ; and
  - (iii) If the notice sent by the Registered Post is returned unserved, it should be published in the Local/Regional Language Newspapers and All India Newspapers, as appropriate and upon such publication, it shall be deemed to have been personally served on such employee.

Save as otherwise expressly provided in these regulation and authority competent under these regulations to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay.

(29) The above Regulation 75 evidently shows that every order, notice and other process made or issued under the Regulations shall, as far as possible, be delivered or tendered to the employee concerned in person. The words "as far as possible" are not without significance and, therefore, the doctrine of communication would apply. It is thus the communication of the order and not its actual receipt which would confer on the employee a cause of action to file a petition in a competent Court of law having territorial jurisdiction to decide the same. It is also provided that where such order cannot be personally served, it shall be served on such employee by Registered Post acknowledgement due at the address of the employee available with the Corporation or if he is on leave as per leave application particulars. This, however, would not provide a cause of action to invoke the writ jurisdiction.

(30) As already noticed above, the petitioner had not served within the territorial jurisdiction of this Court during his service of about two years with the FCI and remained posted in North East Zone of Food Corporation of India at Gangtok (Sikkim) or Siliguri etc. The impugned order dated 4th April, 2002 of his discharge from respondent-Corporation was issued from New Delhi and was addressed to the

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petitioner through the Zonal Manager, (NE), FCI, Guwahati. The order, therefore, is deemed to have been communicated to the petitioner at Guwahati inasmuch as it was out of the reach of the Managing Director, FCI, Headquarters New Delhi, after it was sent out and whatever action that was required to be taken by the petitioner was at the office of Zonal Manager, FCI, Guwahati. Even the relinquishment of charge and handing over the same was to be done by the petitioner at Guwahati. In these circumstances, the addressing of letter dated 12th April, 2002 Annexure P-6/A by the District Office of FCI, Kapurthala does not per se confer any cause of action on the petitioner within the territorial jurisdiction of this Court. It would at the most only confer a right of action. The right of action is a right to enforce cause of action. It is a remedial right for affording redress for the infringement of a legal right. The right of action is a right which gives rise to enforce a cause of action. The actual service of notice is only a mode of conveying the order.

(31) In the case in hand, the order has been served at the address of the employee where he was on LTC. This would, therefore, only confer a right of action. In the circumstances of the case, we are clearly of the view that this Court has no territorial jurisdiction to entertain the writ petition.

(32) As we have observed above that this Court has no territorial jurisdiction to entertain the petition, we would direct that in terms of Order VII Rule 10 of the Code of Civil Procedure, read with Rule 32 of the Writ Jurisdiction (Punjab and Haryana) Rules, 1976, the return of the petition for presentation to the proper Court having territorial jurisdiction. This is the proper course to be followed in view of the law laid down in the case of *Athmanathaswami Devasthanam* versus *K. Gopalaswami Ayyangar (13)*, wherein order of the High Court holding that the revenue Court only has the jurisdiction over the suit and ordering the return of the plaint for presentation to the proper Court was upheld by the Hon'ble Supreme Court. In *Nandita Bose* versus *Rattanlal Nahata (14)*, the plaint was ordered to be returned as the Court where it was filed did not have the pecuniary jurisdiction to entertain the plaint. It was observed that if the plaintiff grossly over-values or under-values the suit with the object of bringing it within the jurisdiction of a particular Court, plaint can be directed to

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(13) AIR 1965 SC 338

(14) AIR 1987 SC 1947

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be returned to the plaintiff for presentation to proper Court. In *Auto Engineering Works* versus *Bansal Trading Co. (15)*, it was held that after having found that the Court had no territorial jurisdiction to entertain the plaint, it ought to have returned the plaint for presentation to the proper forum.

(33) In view of the above legal position, we order return of the petition for presentation of the same to the proper Court having territorial jurisdiction. In the circumstances of the case, there shall be no order as to costs.

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*R.N.R.*

*Before Swatanter Kumar & S.S. Saron, JJ*

DARSHAN KUMAR GUPTA — *Petitioner*

*versus*

PUNJAB NATIONAL BANK & ANOTHER—*Respondents*

C.W.P. No. 8796 OF 2001

10th October, 2002

*Constitution of India, 1950—Art. 226—Prevention of Corruption Act, 1988—Ss. 7 & 13(2)—Registration of a criminal case u/ss 7 & 13(2) by Vigilance Department against a Bank Officer—Bank initiating departmental proceedings by serving a charge sheet containing different articles of charge—Officer claiming similarity in articles of charge and the charges framed in criminal proceedings—Whether departmental proceedings can be stayed till the conclusion of criminal proceedings—Held, no—Different set of facts in criminal & departmental proceedings—No prejudice to the right of defence of the officer before the criminal Court as a result of continuation of departmental proceedings—Petition liable to be dismissed.*

Held, that the departmental proceedings ought not to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent