

Gujarat High Court

Rajnish Kumar Rai, Ips (Retd) S/O S ... vs Union Of India on 1 May, 2023

Bench: Hasmukh D. Suthar

C/SCA/7133/2023

JUDGMENT DATED: 01/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7133 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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RAJNISH KUMAR RAI, IPS (RETD) S/O S R RAI
Versus
UNION OF INDIA

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Appearance:

MR UTKARSH J DAVE(10620) for the Petitioner(s) No. 1
RAHUL SHARMA(8276) for the Petitioner(s) No. 1
MR DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL WITH MR
HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 01/05/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI) C/SCA/7133/2023 JUDGMENT
DATED: 01/05/2023

1. Rule returnable forthwith. Learned advocate Mr. Harsheel Shukla waives service of notice of Rule qua the respondents.

2. Looking to the issue involved in the present petition, learned counsel appearing for the parties jointly submitted that the matter may be disposed of at admission stage.

3. The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India, in which, the petitioner has challenged the order dated 16.02.2023 passed by the Central Administrative Tribunal, Ahmedabad Bench (hereinafter referred to as the 'Tribunal, Ahmedabad Bench') in Original Application No.65 of 2023. The petitioner has also challenged the order dated 22.03.2023 passed by the Tribunal, Ahmedabad Bench in Review Application No.1 of 2023 in Original Application No.65 of 2023. The petitioner has also prayed that this Court may declare that the Tribunal, Ahmedabad Bench has jurisdiction to hear and decide Original Application No.65 of 2023 filed before it and direct the Tribunal, Ahmedabad Bench to hear and dispose of the said application on merits.

4. The factual matrix of the present case is as under:

4.1. It is the case of the petitioner that he belongs to 1992 batch of the Indian Police Service (IPS). He C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 joined services in 1992 itself and was originally allotted to Odisha Cadre. Subsequently, in 1997, his cadre was changed to Gujarat. It is further stated that while he was posted as the IG, NES, CRPF, Shilong, on 30.03.2017, the concerned officer informed the petitioner that in the night on 29th/30th March, 2017, two persons purported to be of the NDFB(S) cadre were killed near village Simlaiguri, District Chirang, Assam in an alleged fake encounter. Arms, ammunition and explosives were also recovered from them. The encounter was carried out in a joint operation of the Assam Police, the Indian Army, the CRPF (210 CoBRA and 156 Bn CRPF). He, therefore, duly informed about this operation to ADJ, NE Zone, CRPF, Guwahati and to the other competent authority as per the practice. Thereafter certain event took place in April-May, 2017 as stated by the petitioner in para 4.13 to 4.18 of the petition.

4.2. It is further stated that petitioner was transferred from the post of IG, NES, Shilong to IG, CIAT School, Chittoor, Andhra Pradesh. Thereafter, in June, 2017, petitioner came to know that preliminary inquiry is conducted and therefore he made a representation in June, 2017 to respondent No.2 against the preliminary inquiry being conducted against him in the matter of the aforesaid fake encounter. However, as no response was received from the concerned respondent, in August, 2017, petitioner filed Original Application No.2670 of 2017 before the C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal, Principal Bench') challenging his transfer to Chittoor and also the institution of preliminary inquiry against him in the matter of fake encounter. It is stated

that on 09.08.2017, the Tribunal, Principal Bench dismissed the said OA on the ground that since the petitioner had joined his new post, the grievance in respect of his transfer had become infructuous. Further, since no order initiating any preliminary inquiry had been placed on record and therefore the Tribunal, Principal Bench could not take cognizance of the newspaper reports. It is stated by the petitioner that the concerned learned counsel appearing for the petitioner withdrew the OA without the permission of the petitioner. Petitioner, therefore, filed Review Application No.205 of 2017 in OA No. 2670 of 2017 on the ground that the petitioner had not instructed his learned counsel to withdraw the OA. However, the said review application was dismissed on 04.10.2017.

4.3. The petitioner has further stated that aggrieved by the dismissal of the OA as well as Review Application filed by the petitioner by the Tribunal, Principal Bench, the petitioner challenged the same before the High Court of Delhi vide Writ Petition (Civil) No.10828 of 2017. During the pendency of the said proceedings before Delhi High Court, a show cause notice dated 28.12.2021 was served to the C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 petitioner. The petitioner, therefore, filed Civil Misc. Application in the pending writ petition and requested to stay the show cause notice. The respondents also filed Civil Misc. Application praying for vacating the interim relief.

4.4. It is further stated that the Delhi High Court disposed of the writ petition filed by the petitioner vide order dated 24.01.2023 and observed that issuance of show cause notice is a fresh cause of action and thereby granted liberty to the petitioner to pursue his grievance with the Central Administrative Tribunal.

4.5. The petitioner, therefore, filed OA No.65 of 2023 before the Tribunal, Ahmedabad Bench challenging the issuance of show cause notice dated 28.12.2021. In the said proceedings, the respondents raised preliminary objection with regard to the jurisdiction of the Tribunal, Ahmedabad Bench and requested that the said application be dismissed. It is stated that the Tribunal, Ahmedabad Bench, vide order dated 16.02.2023, dismissed the said application.

4.6. The petitioner, thereafter, filed Review Application No.1 of 2023 before the Tribunal, Ahmedabad Bench and pointed out the relevant provisions of law. The Tribunal, Ahmedabad Bench dismissed the said review application vide order dated 22.03.2023. Petitioner has, therefore, C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 preferred the present petition.

5. Heard learned advocate Mr. Rahul Sharma for the petitioner and learned Additional Solicitor General Mr. Devang Vyas assisted by learned advocate Mr. Harsheel Shukla for the respondents.

Submissions of learned counsel for the petitioner

6. Learned counsel for the petitioner has made following submissions:

6.1. It is submitted that on 23.08.2018, petitioner had requested respondent No.1 for voluntary retirement under Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958

since he had completed 50 years of age. He had sought voluntary retirement from 30.11.2018 after office hours. However, the respondent No.1 rejected the request of the petitioner vide its letter dated 17.10.2018 on the ground that the inquiry / disciplinary proceedings were pending/contemplated against the petitioner. The petitioner, therefore, filed OA No.528 of 2018 before the Tribunal, Ahmedabad Bench. The said proceedings are still pending. During the pendency of the said proceedings, the Tribunal, Ahmedabad Bench passed an order on 21.02.2019 and granted limited relief to the petitioner and restrained the respondents from taking final decision till the pendency of OA No.528 of C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 2018. Aggrieved by the limited interim relief granted to the petitioner, he preferred Special Civil Application No.5929 of 2019 before this Court. The respondents also filed Special Civil Application NO.8430 of 2019 before this Court challenging the granting of interim relief in favour of the petitioner. This Court passed interim orders on 25.03.2019, 14.08.2019 and 29.01.2020. The said proceedings are still pending before this Court.

6.2. Learned counsel Mr. Sharma would further submit that Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as the 'Rules of 1987') provides that for the persons, who have ceased to be in service by reason of retirement, dismissal or termination of service, may at their option, file an application before the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. It is contended that the words 'termination of service' used in the aforesaid Rule had to be interpreted liberally and the focus of the words should be on the words 'ceased to be in service' and retirement and dismissal are simply examples of the same and are not exhaustive. Thus, it is contended that the words 'termination of service' include all other eventualities (like death, removal, resignation, voluntary retirement, compulsory retirement, etc.) whereby an employee can be said to have ceased to be in service. Thus, it is contended that a person who C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 has resigned from service and who has been removed from service will be covered within Rule 6(2) of the Rules of 1987. It is submitted that as the petitioner has submitted an application for voluntary retirement, his case is covered under Rule 6(2) of the Rules of 1987 and therefore the Tribunal, Ahmedabad Bench has jurisdiction to entertain the application filed by the petitioner challenging issuance of a show cause notice. It is submitted that the Tribunal, Ahmedabad Bench has not properly dealt with the aforesaid aspect while rejecting the OA filed by the petitioner, and therefore, the impugned order passed by the Tribunal, Ahmedabad Bench be quashed and set aside.

6.3. Learned counsel would further contend that cause of action arises when the legal right claimed by the petitioner has, prima facie, been infringed or is threatened to be infringed by the respondents within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof. It is submitted that in the present case, the legal right of the petitioner, prima facie, has been infringed or has been threatened to be infringed by an act of service of show cause notice dated 28.12.2021 within the territorial limits of the Tribunal, Ahmedabad Bench.

6.3.1. Learned counsel submits that service of show cause notice dated 28.12.2021 has threatened the C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 terminal benefits of the service of the petitioner, which would otherwise accrue to him. Thus, the cause of action has arisen within the

territorial jurisdiction of the Tribunal, Ahmedabad Bench, and therefore, the said Tribunal has jurisdiction to entertain the OA filed by the petitioner.

6.4. Learned counsel would also submit that the petitioner had preferred Special Civil Application No.5929 of 2019 before this Court challenging the limited interim relief granted by the Tribunal, Ahmedabad Bench in O.A. No. 528 of 2018 and prayed for further interim relief. This Court, vide interim order dated 14.08.2019, directed that, 'status quo as on today be maintained by both the sides which shall be finally governed by the final outcome of the proceedings'. Thus, from the aforesaid order of granting of status quo, none of the parties to the said petition shall assert/presume a position in respect of the retirement of the petitioner beyond what was already existing on 14.08.2021, directly or indirectly.

6.5. It is submitted that petitioner is serving in IIM, Ahmedabad before passing of the said order of status quo and therefore he is not to be disturbed. Thus, learned counsel submits that the Tribunal, Ahmedabad Bench has jurisdiction to entertain the OA filed by the petitioner.

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 6.6. Learned counsel thereafter placed reliance upon Rule 7(2)(a) of the All India Services (Leave) Rules, 1955 (hereinafter referred to as the 'Leave Rules'). The said Rule provides that a member of the service shall be deemed to have resigned from the service if he is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission.

6.7. It is submitted that a charge-sheet dated 14.01.2019 for having unauthorizedly handed over the charge of IGP, CIAT School, CRPF, Chittoor, Andhra Pradesh on 30.11.2018 and abdicated office on his own without permission/orders of the competent authority has been served to the petitioner. The petitioner continues to remain absent unauthorizedly, as alleged, till the date of filing of the petition and also he has no plan to return to the service of the IPS and he is in employment of IIM for almost four years, and therefore, as per the aforesaid Rule, the petitioner deemed to have resigned from service. If the petitioner deemed to have resigned from service then Rule 6(2) of the Rules of 1987 would apply and therefore also the Tribunal, Ahmedabad Bench has jurisdiction to entertain the OA filed by the petitioner.

6.7.1. At this stage, it is contended that the aforesaid Rule 7 of the Leave Rules was not pointed out while arguing the OA before the Tribunal, C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 Ahmedabad Bench and therefore the petitioner filed review application before the Tribunal and pointed out the aforesaid Rule. However, the Tribunal, Ahmedabad Bench has rejected the review application on the ground that there is no error apparent on the face of the record while passing the order in OA. Learned advocate, therefore, urged that both the impugned orders be quashed and set aside.

6.8. Learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of Rattanlal sharma v. Managing Committee, Dr. Hari Ram (Co. Education) Higher Secondary School and others, reported in (1993) 4 SCC 10. Learned counsel has, more particularly, placed reliance on para 12 of the said decision. It is contended that generally, a point not raised

before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceedings. But, if the plea though not specifically raised before the subordinate tribunals is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts then such plea can be entertained.

6.9. Learned counsel for the petitioner, therefore, urged that the petition be allowed.

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 Submissions of learned Additional Solicitor General appearing for the respondents

7. Learned Additional Solicitor General Mr. Devang Vyas, at the outset, referred the averments made in O.A. No.65 of 2023 filed by the petitioner before the Tribunal, Ahmedabad Bench. It is submitted that in para 2 of the memo of the application, petitioner has only stated that, 'the applicant declares that the subject matter of the order/action against which the applicant seeks redressal is within the jurisdiction of this Hon'ble Tribunal.' It is contended that except the aforesaid averments made in the application, the petitioner had not stated anything more with regard to jurisdiction of the Tribunal, Ahmedabad Bench.

7.1. At this stage, learned ASG has referred the reliefs prayed for by the petitioner in the said OA. It is submitted that petitioner had prayed for quashing and setting aside the preliminary inquiry report submitted by the officer of the respondent No.1 and also prayed to declare that the preliminary inquiry conducted by the said officer was without authority of law. The petitioner also prayed in the said OA for quashing and setting aside the show cause notice dated 28.12.2021 issued to the petitioner and further prayed that respondent No.1 be directed not to take any disciplinary action against the petitioner pursuant to the said show cause notice.

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 7.2. Learned ASG, thereafter, submitted that the petitioner challenged the order of transfer dated 12.06.2017 and initiation of inquiry against him by the officer of respondent No.1 by filing Original Application No.2670 of 2017 before the Tribunal, Principal Bench, New Delhi. The said O.A. filed by the petitioner was dismissed. The petitioner, thereafter, filed Review Application No.205 of 2017 before the Tribunal, Principal Bench, New Delhi. The said review application was also dismissed, against which, the petitioner preferred a writ petition before the Delhi High Court. It is submitted that the Delhi High Court disposed of the said writ petition by granting liberty to the petitioner to approach the Tribunal if he has grievance with regard to show cause notice dated 28.12.2021 in accordance with law. Thus, it is contended that when the petitioner had challenged inquiry initiated by the office of respondent No.1 by filing application before the Tribunal, Principal Bench, New Delhi as well as his transfer order and when the Delhi High Court has granted liberty to the petitioner to approach the Tribunal, it means that Delhi High Court has granted permission to the petitioner to approach the Tribunal, Principal Bench, New Delhi and not the Tribunal, Ahmedabad Bench.

7.3. Learned ASG further submits that the petitioner had already challenged the rejection of application C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 for voluntary retirement by the

respondent by filing O.A. No.528 of 2018 before the Tribunal, Ahmedabad Bench and the petitioner himself had sought direction against the respondent to hold and declare that petitioner is deemed to have retired from service w.e.f. 30.11.2018 after office hours. The said proceedings are still pending. Thus, when the petitioner is not retired or dismissed from service till today, he cannot be permitted to take shelter of provisions contained in Rule 6(2) of the Rules of 1987.

7.4. Learned ASG would further submit that the cause of action to file an application before the Tribunal, Ahmedabad Bench has not arisen within the territorial jurisdiction of the Tribunal, Ahmedabad Bench and therefore also the said Tribunal has no jurisdiction to entertain an application under Rule 6(1) of the Rules of 1987.

7.5. Learned ASG further submits that Rule 7(2)(a) of the Leave Rules is not applicable to the facts of the present case. It is submitted that the said point was available to the petitioner when learned counsel appearing for the petitioner argued the case before the Tribunal, Ahmedabad Bench. However, the said contention was not taken and thereafter review application has been filed by the petitioner. The Tribunal, Ahmedabad Bench has rightly rejected the said review application on the ground that a new plea C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 was raised by the petitioner for the first time in review application.

7.6. Learned ASG submits that if a member of the service has remained absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, it is for the employer to consider that such a member of the service shall be deemed to have retired from service or not. However, the said Rule is not applicable to the facts of the present case. It is further submitted that in the present case, though the petitioner has given an application for voluntary retirement, the same has not been accepted by the respondents and the issue is pending in O.A. No.528 of 2018 filed by the petitioner before the Tribunal, Ahmedabad Bench. Against the interim order passed by the Tribunal, Ahmedabad Bench in O.A. No.528 of 2018, the petitions filed by both the parties are pending before this Court, wherein, this Court has directed both the parties to maintain status quo. Thus, when the issue is pending before the Tribunal, Ahmedabad Bench as well as before this Court and now when the respondents have issued charge-sheet against the petitioner after the impugned orders are passed by the Tribunal, Ahmedabad Bench, it is not open for the petitioner to place reliance upon the aforesaid Rule.

7.7. Learned ASG has placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 State of Goa v. Summit Online Trade Solutions (P) Ltd. and others, reported in 2023 SCC Online SC 254. Learned ASG has more particularly relied on the observations made in para 12 to 16 of the said decision.

7.8. Learned ASG lastly submitted that contention taken by the petitioner that his right has been infringed or has been threatened to be infringed by the act of service of the show cause notice dated 28.12.2021 within the territorial limits of the Tribunal, Ahmedabad bench is also misconceived. He would submit that the show cause notice dated 28.12.2021 has been issued by the Under Secretary to the Government of India, Ministry of Home Affairs situated at New Delhi and therefore the Tribunal, Principal Bench, New Delhi has jurisdiction to entertain the application filed by the

petitioner. Merely because the petitioner is residing in Ahmedabad, the Tribunal, Ahmedabad Bench has no jurisdiction to entertain the application. Further, when the petitioner filed OA before the Tribunal, Principal Bench, New Delhi against his transfer and initiation of preliminary inquiry and when the Delhi High Court has permitted the petitioner to challenge the show cause notice before the Tribunal, the Tribunal, Principal Bench, New Delhi has jurisdiction to entertain the application and therefore no error is committed by the Tribunal, Ahmedabad Bench while passing the impugned orders. Learned ASG, therefore, C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 urged that this petition be dismissed.

8. Having heard the learned counsels appearing for the parties and having gone through the material placed on record, following question arises for consideration of this Court

(a) Whether in the facts of the present case, the Tribunal, Ahmedabad Bench has jurisdiction to entertain the Original Application filed by the petitioner or not?

Discussion

9. From the material placed on record, it would emerge that the petitioner belongs to 1992 batch of IPS. When he was posted at Shilong, on 30.03.2017, two persons were killed in an encounter and thereafter certain event took place in April-May, 2017 as stated in the memo of the petition. The petitioner was, thereafter, transferred from Shilong to Chittoor, Andhra Pradesh. The petitioner, thereafter, came to know about the preliminary inquiry initiated against him. He, therefore, filed OA No. 2670 of 2017 before the Tribunal, Principal Bench, New Delhi challenging his transfer and also initiation of preliminary inquiry against him in the matter of fake encounter. On 09.08.2017, the Tribunal, Principal Bench dismissed the said OA, against which, the petitioner preferred Review C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 Application No.205 of 2017 before the same Bench. The said Review Application was also dismissed. Petitioner, therefore, filed a Writ Petition before the Delhi High Court. During the pendency of the said proceedings, a show cause notice dated 28.12.2021 was served to the petitioner. The Delhi High Court, ultimately, disposed of the writ petition filed by the petitioner vide order dated 24.01.2023 and liberty was reserved to the petitioner to pursue his grievance before the Tribunal. Thus, this Court is of the view that when the Delhi High Court has granted permission to the petitioner to approach before the Tribunal, the petitioner was required to file OA against the issuance of show cause notice dated 28.12.2021 before the Tribunal, Principal Bench, New Delhi.

10. The petitioner filed OA No. 65 of 2023 before the Tribunal, Ahmedabad Bench and challenged the said show cause notice. In the application filed by the petitioner before the Tribunal, Ahmedabad Bench, petitioner has only stated in para 2 as under:

"2. Jurisdiction of the Tribunal: The applicant declares that the subject matter of the order/action against which the applicant seeks redressal is within the jurisdiction of this Hon'ble Tribunal."

11. Except the aforesaid averments made in the memo C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 of the application with regard to the jurisdiction of the Tribunal, Ahmedabad Bench, no other averment is made by the petitioner in the said application.

12. Learned counsel for the petitioner has placed reliance on Rule 6(2) of the Rules of 1987. Therefore, at this stage, this Court would like to refer to the provisions contained in Rule 6 of the Rules of 1987 which provide as under:

"6. Place of filing applications.--

(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction--

(i) the applicant is posted for the time being, or

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

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub- rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

12.1.Relying upon the aforesaid Rule, it is contended before the Tribunal, Ahmedabad Bench that a person, C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 who has resigned from service and who has been removed from service will be covered within Rule 6(2) of the Rules of 1987. It is also submitted that as the petitioner has submitted an application for voluntary retirement, his case is covered under the said sub-rule, and therefore, the Tribunal, Ahmedabad Bench has jurisdiction to entertain the application filed by the petitioner. It is also contended that the words 'termination of service' used in the aforesaid Rule had to be interpreted liberally and the focus should be on the words 'ceased to be in service' and retirement and dismissal are simply examples of the same and are not exhaustive. It is submitted that the words 'termination of service' include all other eventualities (like death, removal, resignation, voluntary retirement, compulsory retirement, etc.) whereby an employee can be said to have ceased to be in service. We are of the view that the said submission canvassed by learned advocate for the petitioner is misconceived, in the facts of the present case.

12.2.It is pertinent to note that the petitioner has tendered application for voluntary retirement. The said application submitted by the petitioner has been rejected by the respondents and therefore the petitioner has filed OA No.528 of 2018 before the Tribunal, Ahmedabad Bench and in the said application, petitioner himself has sought direction against the respondents to hold and declare that

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 petitioner is deemed to have retired from service w.e.f. 30.11.2018 after office hours. The Tribunal, Ahmedabad Bench has passed an order granting limited interim relief in favour of the petitioner. The petitioner has, therefore, filed Special Civil Application No.5929 of 2019 before this Court. This Court has passed an order whereby both the parties are directed to maintain status quo. The said petition is still pending. Thus, we are of the view that when the petitioner himself has challenged rejection of his application for voluntary retirement and the issue is still pending for consideration before this Court, it is not open for the petitioner to presume that his application for voluntary retirement has been accepted and he is retired from the service.

12.3.Rule 6(2) of the Rules of 1987 specifically provides that the persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at their option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. As observed hereinabove, in the present case, petitioner is not retired from service nor his services are terminated. Thus, it is not a case of deemed resignation, as contended by learned counsel for the petitioner. He cannot place reliance upon the provisions contained in Rule 6(2) of the Rules of 1987. Hence, in the C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 facts of the present case, the aforesaid provision would not render any assistance to the petitioner.

13. It was next contended by learned counsel for the petitioner that the cause of action arises when the legal right claimed by the petitioner has, prima facie, been infringed or is threatened to be infringed by the respondents within the jurisdiction of the Court. It is the case of the petitioner that legal right of the petitioner, prima facie, has been infringed or has been threatened to be infringed by an act of service of show cause notice dated 28.12.2021 within the territorial limits of the Tribunal, Ahmedabad Bench and therefore as per Rule 6(1) of the Rules of 1987, the said Tribunal has jurisdiction.

13.1.In rebuttal, learned ASG has placed reliance on the decision of the Hon'ble Supreme Court in the case of Summit Online Trade Solutions (P) Ltd. and others (supra), wherein, the Hon'ble Supreme Court observed in para 12 to 16 as under:

"12. In support of territorial jurisdiction of the High Court to entertain and try the writ petition, this is what the petitioning company has stated:

"29. That his Hon'ble Court has jurisdiction to entertain the said writ petition as the cause of action arises in Sikkim only. Both the Petitioner and the Respondents are located within the territorial jurisdiction of this Hon'ble High Court."

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13. Apart from these two sentences, nothing more has been averred in support of territorial jurisdiction of the High Court.

14. From the above, it is clear that according to the petitioning company the cause of action has arisen in Sikkim only, meaning thereby the whole of the cause of action and not part of it; additionally, it is stated that all the respondents are located within the territorial jurisdiction of the High Court which is factually incorrect.

15. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a high court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle. Bearing this in mind, we have looked into the petition memo of W.P.(C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company to have arisen within the territorial jurisdiction of the High Court.

16. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the 'cause of action', referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in *Cooke vs. Gill*¹ that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

13.2. Thus, from the aforesaid decision, it can be said that what would constitute 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 13.3. In the present case, as observed hereinabove, for the sake of repetition, it is required to be noted that the petitioner has only stated in para 2 of the OA filed before the Tribunal, Ahmedabad Bench that, 'the applicant declares that the

subject matter of the order/action against which the applicant seeks redressal is within the jurisdiction of this Hon'ble Tribunal.' No other averments are made how the Tribunal, Ahmedabad Bench is having jurisdiction to entertain the said application.

13.4. Thus, we are of the view that the contention raised by learned counsel appearing for the petitioner that as per Rule 6(1) of the Rules of 1987, the Tribunal, Ahmedabad Bench has jurisdiction is also misconceived for the reasons that the respondent has issued the show cause notice from the office situated at New Delhi and merely because show cause notice has been issued to the petitioner, it cannot be presumed that legal right of the petitioner has been infringed or is threatened to be infringed by the respondents because of the issuance of the said show cause notice. It is always open for the petitioner to submit reply to the said show cause notice and thereafter it is also open for the respondents to take appropriate step after considering the reply submitted by the petitioner. Therefore, at this stage, it cannot be presumed that any of the legal right of the petitioner has been C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 infringed, as contended. Thus, we are of the view that part of cause of action has not been arisen within the jurisdiction of the Tribunal, Ahmedabad Bench.

14. The learned counsel for the petitioner also contended that as per Rule 7(2)(a) of the Leave Rules, a member of the Service shall be deemed to have resigned from the service if he is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission. Thus, this Court would like to refer Rule 7 of the Leave Rules, which provides as under:

"7. Maximum period of absence from duty--(1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.

(2) A member of the Service shall be deemed to have resigned from the service if he -

(a) is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or

(c) continues of foreign service beyond the period approved by the Central Government: Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service shall be given to the member of the Service before the provisions of this sub-rule are invoked."

C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 14.1. From the aforesaid Rule 7(2)(a), it can be said that if a member of the service has remained absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, he shall be deemed to have resigned from the Service. However, in the present case, as discussed hereinabove, it is not the case of the petitioner that any leave or permission is sanctioned to the petitioner by the respondents and thereafter he has remained absent without authorisation.

14.2. In the present case, as observed hereinabove, though the application for voluntary retirement has been tendered by the petitioner, the same has not been accepted by the respondents and this Court has directed both the parties to maintain status quo. Hence, in the facts of the present case, aforesaid provision would also not be applicable.

14.3. It is pertinent to note that admittedly the petitioner has not placed reliance upon the aforesaid Rule 7(2)(a) of the Leave Rules when the OA was heard by the Tribunal, Ahmedabad Bench and only after dismissal of the said application, review application was filed in which for the first time the aforesaid contention was taken. The Tribunal has rightly rejected the review application on the ground that there is no apparent error on the face of the record C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 as the said contention was not at all raised before the Tribunal.

14.4. The petitioner has placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of Rattanlal sharma (supra), wherein, the Hon'ble Supreme Court observed in para 12 as under:

"12. In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to uphold the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge of his own case by being a member of the enquiry committee was not specifically taken before the Deputy commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceeding, more so, when the case of prejudice on account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before the tribunal or C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 administrative authorities may not be allowed to be raised for the first time in the writ proceeding more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in A.M. Allison versus State of Assam, AIR 1957 SC 227 particularly when the plea sought to be raised for the first time in a Writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that litigant should not be shut out from raising such plea which goes to the root of the lis involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in A.S. Arunachalam Pillai v. M/s. Southern Roadways Ltd. and another [1960] AIR SC 1191, The

Cantonment Board, Ambala v. Pyarelal [1963] 3 SCR 341. In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Ramu Ram was included and retained in the enquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner. The observation of S.R. Das, C.J. in Mohd nooh case may be referred to in this connection:

".....Where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 of fair play, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex-facie was a nullity for reasons aforementioned."

14.5. From the aforesaid observations, it reveals that the fact of the said case were totally different. In the said case, one of the members of the inquiry committee appeared as a witness against the concerned appellant to prove the charge levelled against the appellant. Inquiry was proceeded and therefore appellant was having reasonable apprehension about bias of one of the members of the inquiry committee. On the basis of the said fact the issue of bias was not raised before the concerned Court and it was raised for the first time before the High Court. Thus, on the basis of the said uncontroverted and admitted facts when it goes to the root of the case, the Hon'ble Supreme Court made the aforesaid observations.

14.6. The aforesaid decision would not render any assistance to the petitioner in the facts of the present case. Even otherwise, we have independently examined the provisions contained in Rule 7(2)(a) of the Leave Rules and we are of the view that the petitioner cannot take advantage of the said Rule as C/SCA/7133/2023 JUDGMENT DATED: 01/05/2023 the dispute with regard to his voluntary retirement is pending before this Court and this Court has passed an order whereby both the parties are directed to maintain status quo. Thus, because of the said order passed by this Court, petitioner is permitted to work with IIM and hence petitioner is working with the said institution. We are, therefore, of the view that the said provision would not be applicable to the facts of the present case.

15. We have gone through the pleadings of OA as well as the reliefs prayed for by the petitioner before the Tribunal, Ahmedabad Bench and we are of the view that the Tribunal, Ahmedabad Bench has no jurisdiction to entertain the OA filed by the petitioner.

16. Now, at this stage, it is also relevant to note that during the course of submission canvassed by learned counsel appearing for the parties, it is stated that now the charge-sheet is also filed against the petitioner pursuant to issuance of show cause notice dated 28.12.2021 and the petitioner has also filed separate OA before the Tribunal, Ahmedabad Bench. The Tribunal, Ahmedabad Bench has rejected the said OA on the ground of jurisdiction against which the petitioner has already filed separate petition.

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17. In view of the aforesaid discussion, we are of the view that the Tribunal, Ahmedabad Bench has no jurisdiction to entertain the Original Application No.65 of 2023 filed by the petitioner, in the facts of the present case.

18. Thus, looking to the overall facts and circumstances of the present case, we are of the view that the Tribunal, Ahmedabad Bench has not committed any error while dismissing the Original Application No.65 of 2023 and Review Application No.1 of 2023 in Original Application No.65 of 2023 filed by the petitioner and therefore no interference is required in the present petition. Accordingly, petition is dismissed. Rule is discharged.

(VIPUL M. PANCHOLI, J) (HASMUKH D. SUTHAR, J) LAVKUMAR J JANI