

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.1004 of 2025
Decided on: 08.07.2025.

Santosh Kumar

...Petitioner

Versus

Union of India & ors.

...Respondents

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?.*

For the petitioner:

Mr. Jeevan Kumar, Advocate.

For the respondents:

Mr. Balram Sharma, Deputy
Solicitor General of India [Senior
Advocate] with Mr. Rajeev
Sharma, Advocate.

G.S. Sandhawalia, Chief Justice [Oral]

Challenge in the present writ petition is to the order dated 06.08.2024 passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu [hereinafter referred to as 'the Tribunal'] in O.A. No.248 of 2018, titled *Santosh Kumar versus Union of India & Others*, whereby, the petitioner's Original Application was dismissed on the ground that he could not be promoted to the rank of Naib-Subedar.

2. Since, the present writ petition was filed before

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

this Court on 13.11.2024, an objection was raised by the counsel for Union of India on 03.03.2025 regarding maintainability of writ petition. In response, counsel for the petitioner submitted that the petitioner was superannuated on 31.07.2024, prior to the date of passing of the order and being a resident of Himachal Pradesh and settled in District Hamirpur, he would be entitled to invoke the jurisdiction of this Court as part of the cause of action arose within the jurisdiction of this Court as he is receiving his pension within the jurisdiction of this Court. He has relied upon the judgment passed by the Apex Court in **Shanti Devi alias Shanti Mishra versus Union of India and Others, (2020) 10 SCC 766**, in this context, which was also referred to by Mr. Sharma on behalf of the Union of India

3. Perusal of the paper-book would go on to show that the cause of action did not arise after the petitioner's retirement but was a subject-matter of consideration during his service period. The writ petition itself would go on to show that the petitioner was dissatisfied with the action of respondents and had filed Original Application No.240 of 2018 much prior in point of time to his retirement, seeking the said benefit from the date his

juniors were promoted. Further all the representations made prior to filing of Original Application were during his posting in the erstwhile State of Jammu & Kashmir. Thus, the cause of action had accrued within the State of Jammu & Kashmir and accordingly, the petitioner had filed the Original Application. It is also apparent that he invoked the jurisdiction of the Tribunal under Sections 14 and 15 of the Armed Forces Tribunal Act, 2007. In fact, he himself pleaded as under in the Original Application:

“2. Jurisdiction of the Tribunal

The applicant is a serving JCO and is posted in 20 JAK RIF C/O 56 APO and is posted at Fukche in Ladakh, J&K State and a permanent resident Himachal Pradesh State, as such competent to invoke the jurisdiction of this Hon’ble Tribunal, Jammu bench as per rule 6 of the AFT (procedure) Rule 2008.”

4. Thus, apparently, it was in such circumstances that the matter only due to delay was decided post his retirement. In such circumstances, no cause of action arose post his retirement within the jurisdiction of this Court that would enable us to take the benefit of the judgment in ***Shanti Devi alias Shanti Mishra’s*** case (supra). The said case was peculiar in the sense that the pension had been stopped within the State of Bihar and it

was on that count the Apex Court had interfered with the orders of Single Bench and Division Bench of Patna High Court by coming to the conclusion that the retiree was receiving pension in the State of Bihar, when the petitioner was residing at Darbhanga, and stoppage had been thereafter, therefore, relegation to the State of Jharkhand where another writ petition was pending, was held not to be justified.

5. The said facts, therefore, are totally different from the facts of the present case. The Apex Court itself in the said judgment relied heavily on the aspect of the 'cause of action' quoting extensively from Mulla Black's Law Dictionary and the fact that the constitutional amendment was made in Article 226 (2) of the Constitution, which was interpreted in ***Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640***. The benefit or the exercise of the jurisdiction was given to the High Court where the cause of action wholly or in part, arises within its territorial limits and thus the amendment was noticed to be aimed at widening the width of the area for reaching the writs issued by different High Courts.

6. It was not the case of the petitioner that his pension had been stopped and only because of the non-

grant of promotion, it has been agitated that his pension would be liable to be enhanced, if the benefit of promotion was granted.

7. Once the petitioner himself, in his Original Application, had stated that the cause of action arose in the State of Jammu & Kashmir by invoking the jurisdiction of Tribunal by that point of time, he is bound by his own statement. Therefore, he cannot now turn around and build a new case only on account of his fortuitous circumstances of his superannuation and now residing in the State of Himachal Pradesh.

8. In **Alchemist Ltd. and another vs. State Bank of Sikkim and others (2007) 11 SCC 335**, the issue had also arisen as to whether a part of the cause of action had arisen in the territorial jurisdiction of the Punjab and Haryana High Court and whether the Writ petition as such was maintainable which had been dismissed on the ground of lack of jurisdiction as the plea as such of the petitioner before the Apex Court was that the letter of revocation has been received by the said Company at Chandigarh and part performance of the contract had taken place at Chandigarh and some amount had been deposited in a fixed deposit at Chandigarh on the request of the respondents. Resultantly,

while referring to the earlier judgments also of ***Election Commission v. Saka Venkata Rao AIR 1953 SC 210*** and ***Lt. Col. Khajoor Singh v. Union of India AIR 1961 SC 532***, wherein it has been held that the residence or location of the person affected would not determine the jurisdiction of the High Court. The amendment made thereafter was taken into consideration and the factum of cause of action which had to be ascertained in order to support the right of the judgment of the Court and the fact and substance of the matter has to be seen and not the form. Resultantly it was held that even if a small fraction of cause of action arises, the Court would have territorial jurisdiction to entertain the petition but it must be a part of cause of action nothing less than that. In such circumstances, we are of the considered opinion that no part of cause of action within the territorial jurisdiction has arisen in the present case which would clothe us with the jurisdiction to exercise our powers under Article 226 of the Constitution of India.

9. Resultantly, we are of the considered opinion that there is merit regarding the lack of jurisdiction, therefore, we dismiss the present writ petition on this count by giving liberty to the petitioner to approach the

Court of competent jurisdiction.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

July 08, 2025
[Shivender/Bhardwaj]