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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 06.07.2020***
Pronounced on: 13.07.2020

\+ W.P.(C) 3334/2019

PRABHAT RANJAN DEO ..... Petitioner
Through Mr. Arvind Varma, Sr. Advocate with Ms. Aditi Mohan, Advocate

versus

UNION PUBLIC SERVICE COMMISSION AND ORS.
..... Respondents
Through Mr. Naresh Kaushik, Adv. for R-1.
Mr. Anil Grover, Sr. Addl. Advocate General with Mr. Mishal Vij, Adv. for R-2.
Mr. Akshay Makhija, CGSC with Ms. Roshni Namboodiry, Advocate and Ms. Rupali Kapoor, GP for R-3
Mr. S.K. Gupta, Advocate for R-4

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

C.M. APPL. 9374/2020 (Early Hearing) & 13286/2020 (Early Hearing)

Both the applications for early hearing of the Petition are allowed and the Petition is taken up for hearing.

W.P.(C) 3334/2019

1. The legal controversy that arises for consideration is the maintainability of the present petition before this Court. It would be

exposit here to give a narrative of short and uncontroverted facts, only to decide the jurisdiction of this Court to entertain the Petition.

2. Petitioner successfully qualified the Civil Services Examination in the year 1986 and was allocated Indian Police Service ('IPS') and assigned Haryana Cadre. On 01.10.2018, vacancy arose in the post of Director General Police (DGP), Haryana, pursuant whereto, State of Haryana, on 25.01.2019, sent a list of 11 eligible officers, who had completed 30 years of service, to UPSC for consideration and empanelment. On 18.02.2019, UPSC empanelled three IPS officers, but Petitioner was not amongst the three. Pursuant to empanelment by the UPSC, on 18.02.2019, Respondent No. 4 herein was appointed as DGP, by State Government of Haryana.

3. Petitioner in the present petition assails the empanelment dated 18.02.2019 made by UPSC and the subsequent appointment of Respondent No. 4 as DGP, State of Haryana vide Appointment Order dated 18.02.2019.

4. Appointment of Respondent No. 4 was initially challenged by the Petitioner by filing a Writ Petition, being W.P.(C) No.247/2019, in the Supreme Court under Article 32 of the Constitution of India. Supreme Court vide order dated 25.03.2019 disposed of the writ petition with the following order:

> *"Having heard learned counsel for the petitioner and upon perusing the relevant material, we are not inclined to entertain the Article 32 petition. The petitioner may approach the jurisdictional High Court, if so advised.*

The writ petition is, accordingly, dismissed.

Pending application(s), if any, stand disposed of."

5. Mr. Kaushik, learned counsel for UPSC, at the outset, raises an objection to the maintainability of the present petition under Article 226 of the Constitution of India and submits that this Court has no jurisdiction to entertain the petition. It is submitted that IPS is an All India Service, and thus Petitioner is amenable to the jurisdiction of Central Administrative Tribunal. The Court of 'first instance' for 'service matters' in light of the provisions of Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act') is the Central Administrative Tribunal, as held by the Constitution Bench of the Supreme Court in ***L. Chandra Kumar v. Union of India, (1997) 3 SCC 261***. Reliance is placed specifically on Section 14 (1) of the Act in this regard. Reliance is also placed on the judgement of the Supreme Court in ***Kendriya Vidyalaya Sangathan v. Subhas Sharma, (2002) 4 SCC 145***, where the Supreme Court, relying on ***L. Chandra Kumar (supra)***, held that the High Court erred in law in directly entertaining the writ petition concerning service matters of employees of Kendriya Vidyalaya, as these matters directly come under the jurisdiction of the Central Administrative Tribunal. Attention of the Court is drawn to orders passed by different Benches of this Court, following ***L. Chandra Kumar (supra)***, declining to entertain petitions concerning service matters of employees of Organizations/Departments/Ministries, which are covered/notified under the Act.

6. Mr. Anil Grover, Senior Additional Advocate General appearing on behalf of Respondent No. 2, adopts the argument of Mr. Kaushik. Additionally, he relies on a judgement of a Division Bench of this Court in ***Savitur Prasad v. Union of India, 2017 SCC OnLine Del 12297***, where, in an appeal, Division Bench was examining the correctness of the judgement of a Single Judge, dismissing the petition on the ground that the only remedy available to the Petitioner was to approach the Central Administrative Tribunal. The Division Bench upheld the view of the Single Judge and observed that by Promulgating the Act, Parliament has, by virtue of Section 14(1) of the Act, conferred the jurisdiction on Central Administrative Tribunals, to adjudicate service matters relating to employees of Authorities covered under the Act.

7. Mr. S.K. Gupta, learned counsel appearing for Respondent No. 4, reiterating the above arguments, relies on a judgement of a Coordinate Bench of this Court in ***W.P.(C) 9339/2019, titled Ashok Kumar Aggarwal vs. Union of India & Ors., decided on 28.08.2019*** to substantiate the objection that present petition is not maintainable before this Court.

8. Responding to the preliminary objection raised by learned counsels for the Respondents, Learned Senior Counsel for the Petitioner draws the attention of this Court to the order dated 25.03.2019 passed by the Supreme Court. The fulcrum of the argument is that Supreme Court granted liberty to the Petitioner to approach the 'jurisdictional High Court' and as office of UPSC is located within the Territorial jurisdiction of this Court, the jurisdictional High Court is Delhi High Court. Present

petition has been filed in terms of the liberty granted by the Supreme Court and thus it is not open to the Respondents to raise any objection to its maintainability.

9. Without prejudice to the said contention, Learned Senior Counsel argues that existence of an alternate remedy is not a bar in entertaining a petition by a Writ Court and is merely a rule of self-imposed limitation. Courts have held that the principle of exhausting efficacious alternate statutory remedy vis-à-vis exercise of writ jurisdiction is merely a rule of prudence and discretion and not a rule of law. Learned Senior Counsel has relied on the following judgements:

1. ***State of Uttar Pradesh vs. Mohammad Nooh, 1958 SCR 595 (Para 10)***
2. ***Whirlpool Corporation vs. Registrar of Trademarks, Mumbai & Ors., (1998)8 SCC (Para 14,15)***
3. ***Maharashtra Chess Association vs. Union of India, 2019 SCC Online SC 932 (Para 22-25)***
4. ***Balkrishna Ram vs. Union of India and Anr., (2020) 2 SCC 442 (Para 14)***

10. Learned Senior Counsel for the Petitioner submits that the present petition has been pending in the Court for a long time and the Petitioner has been diligently espousing his cause since March, 2019, without a single adjournment, till date. Petitioner is due to superannuate on 30.09.2020 and if, at this stage, he is relegated to the Central Administrative Tribunal, grave and irreversible prejudice would be caused to the Petitioner. Reliance is placed on the judgement in the case

of ***Har Kaur Chadha and Another vs. NCT of Delhi and Another, 2019 SCC OnLine Del 11658***, where a Coordinate Bench of this Court has held that the decision to entertain or not to entertain an action under a writ jurisdiction is a decision to be taken by the High Court on examination of the facts and circumstances. Court observed that Writ Petition had been pending for more than 3 years and to relegate the Petitioner to an alternative remedy, at this stage, would needlessly cause delay and prejudice the Petitioner. The plea of the Respondents therein, of existence of alternative remedy was rejected. Learned Senior Counsel argues that Court had placed reliance on Paras 22 and 23 of the judgement of the Supreme Court in ***Maharashtra Chess Association (supra)***, which are as under:

> *"22. This argument of the second Respondent is misconceived. The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.*
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> *23. This understanding has been laid down in several decisions of this Court. In Uttar Pradesh State Spinning Co. Limited v. R S Pandey this Court held:*
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> > *"11. Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a*

rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy."

11. I have heard Learned Senior Counsel for the Petitioner and learned counsels for the Respondents and examined the rival contentions.

12. Admittedly, Petitioner is a member of an All India Service, which is covered under Section 14(1)(b)(i) of the Act. Section 14(1)(b)(i) of the Act provides that, save as otherwise expressly provided in the Act, the Central Administrative Tribunal shall exercise on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before that day, by all Courts in relation to all service matters concerning a member of any All India Service. Section 3(q) of the Act defines 'Service Matters' as all matters relating to conditions of a service and includes matters with respect to tenure, confirmation, seniority, promotion etc.

13. The Constitution Bench of the Supreme Court in ***L. Chandra Kumar (supra)*** laid down that the Tribunals created pursuant to Article 323-A or under Article 323-B of the Constitution of India are competent

to hear matters entrusted to them and will continue to act as only Courts of 'first instance' in respect of the areas of law for which they have been constituted. Supreme Court categorically observed that it will not be open for litigants to directly approach the High Court even in cases where there is a challenge to the vires of statutory Legislation, by overlooking the jurisdiction of the concerned Tribunal, with a cautious caveat that the Tribunal shall not entertain a challenge regarding the vires of the Parent Statute, following the settled principle that a Tribunal, which is a creature of an Act, cannot declare that very Act to be unconstitutional. In the latter case alone, Supreme Court observed, that the High Court concerned may be approached directly. This observation of the Supreme Court made in para 93 of the judgement was reiterated in the penultimate paragraph 99, holding that the Tribunals will continue to act as Courts of 'first instance' and will have the competence and jurisdiction to test the constitutional validity of Statutory provisions and Rules.

14. Insofar as the jurisdiction of the High Courts is concerned, Supreme Court further observed that the jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution of India, is a part of the inviolable basic structure of the Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred on the High Courts and the Supreme Court. It was thereafter held that while the Tribunals would function as Courts of 'first instance', all decisions of these Tribunals will be subject to scrutiny before a Division Bench of the High Court within whose

jurisdiction the concerned Tribunal falls. The conundrum of jurisdiction of the High Courts under Articles 226/227 of the Constitution of India vis-à-vis Tribunals created under Articles 323-A and 323-B of the Constitution, was resolved by the Supreme Court by its legal enunciation in the following words:

> *"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the*

legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

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99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

15. Following the binding dicta of the Supreme Court in the said judgement, several Coordinate Benches of this Court have dismissed petitions for lack of jurisdiction in cases where the Petitioners were amenable to jurisdiction of the Central Administrative Tribunals. Learned counsels for the Respondents have placed on record several such orders. I may refer to a few as follows :

1. ***Dr. Nitesh Kumar Tripathi vs. Union Public Service Commission and Anr., being W.P.(C) 9422/2017, decided on 21.10.2017.***

2. ***Praveen Sharma vs. U.P.S.C., decided on 20th June, 2007.***

3. ***Pawan Kumar vs. Union of India, 2015 SCC OnLine Del 6688.***

4. ***Shahin Rustam vs. Indira Gandhi National Open University, 2014 SCC OnLine Del 4127.***

16. It is clear that after the authoritative pronouncement of the Constitution Bench of the Supreme Court, this Court cannot entertain the present petition and remedy of the Petitioner lies only before the Central Administrative Tribunal. The principles laid down in ***L. Chandra Kumar (supra)*** are binding on this Court in view of Article 141 of the Constitution of India.

17. Learned Senior Counsel for the Petitioner has strenuously argued that alternate remedy cannot be a bar to entertain a petition under Article 226 of the Constitution of India. Reading of the judgement in ***L. Chandra Kumar (supra)*** and Section 14(1) of the Act makes it clear, in the opinion of this Court, that in relation to service matters covered under the Act, there is an ouster of jurisdiction of the High Court as a Court of 'first

instance' and the Tribunal is not an 'alternative', but is the 'only' Forum available to the Petitioner. It is neither a matter of 'choice' for the Petitioner to approach the Tribunal, nor is it a matter of discretion with this Court to entertain the petition.

18. There cannot be a doubt on the proposition canvassed by Learned Senior Counsel that jurisdiction conferred on High Courts under Article 226 of the Constitution of India is an inviolable basic framework of our Constitution, however, with respect to service matters of the employees covered under the Act, High Courts cannot exercise jurisdiction in the first instance. As enunciated by the Supreme Court, all decisions of the Tribunal are subject to scrutiny by a Division Bench of the concerned High Court and it is at this stage that High Court exercises its power of Judicial Review.

19. The order of the Supreme Court passed on 25.03.2019, relied upon heavily by Learned Senior Counsel, has to be read and understood in the light of the judgement of the Constitution Bench in ***L. Chandra Kumar (supra)***, to mean a High Court exercising power of judicial review over the order of the Tribunal, having territorial jurisdiction in the matter. In my view, the contention of the Petitioner that the Supreme Court intended to confer jurisdiction upon this Court, which it does not have, cannot be sustained. The argument that the petition has been pending in this Court since March, 2019 and should be entertained, no doubt appeals at first blush, but cannot be sustained due to lack of jurisdiction. No Court can usurp a jurisdiction, it lacks and I am afraid, this plea does not take the case of the Petitioner forward.

20. The common thread that runs in the judgements relied upon by the Petitioner in ***Maharashtra Chess Association (supra), Whirlpool Corporation (supra) and State of Uttar Pradesh (supra)***, is that the existence of an Alternate remedy in an Alternate Forum, where the aggrieved party may approach for a relief, does not itself create a legal bar on a High Court exercising its writ jurisdiction. Supreme Court in ***Whirlpool Corporation (supra)*** held that the power to issue prerogative Writs under Article 226 of the Constitution of India is plenary in nature and can be exercised for issuing writs in the nature of mandamus, prohibition, certiorari, quo-warranto etc. as well as for enforcement of Fundamental Rights contained in Part III of the Constitution and 'for any other purpose'. However, none of these judgements deal with the power of the High Court to entertain a writ petition enforcing rights with respect to 'service matters' covered under Section 14 read with Section 3(q) of the Act and thus, cannot advance the case of the Petitioner.

21. In ***Maharashtra Chess Association (supra)***, the appeal was with respect to a private Agreement between the parties therein and the question was with regard to ouster of the writ jurisdiction of the Bombay High Court in the context of a clause in the Bye-Laws conferring exclusive jurisdiction on the Courts at Chennai.

22. In ***State of Uttar Pradesh (supra)***, the main issue before the Supreme Court was with regard to the jurisdiction of the High Court to decide questions, which were raised for the first time, not having been raised before the Appellate and the Revisional Authority under the Police

Regulations, being a self-contained mechanism for redressal of grievances against the punishment imposed on a Police Officer.

23. In ***Har Kaur Chadha (supra)***, a Coordinate Bench of this Court was dealing with an order under the Land Acquisition Act, 1894 for grant of an alternate plot and a request for mutation. An objection was raised by the Respondents that the Petitioners had an alternative remedy of challenging the order before the Deputy Commissioner under the Delhi Land Revenue Act, 1954. It is in this context that the Court held that it was discretionary for the High Court to entertain a petition, despite the existence of an alternative remedy.

24. In ***Balkrishna Ram (supra)***, the question raised in the appeal was whether an appeal against an order of the Single Judge of the High Court deciding a case related to an Armed Forces Personnel pending before the High Court was required to be transferred to the Armed Forces Tribunal or should be heard by Division Bench of the High Court. In this context, the other question that arose was whether power of judicial review vests with a High Court with regard to orders passed by the Armed Forces Tribunal as a part of the basic structure of the Constitution. Genesis of the second issue was a specific provision providing for an Appeal to the Supreme Court, under the Armed Forces Tribunals Act, 2007, against the orders of the Tribunal. None of these judgements, in my opinion, even remotely deal with the controversy raised in the present petition.

25. In view of the judgement in (***L. Chandra Kumar) (supra)*** and Section 14(1) read with Section 3(q) of the Act, present Petition is not maintainable in this Court and is accordingly dismissed.

26. It would, however, be open to the Petitioner to approach the Central Administrative Tribunal for determination of his grievances on merits. It is made clear that this Court has not expressed any opinion on the merits of the case. The arguments were heard and judgement was reserved limited only to the jurisdiction of this Court to entertain the petition.

C.M. 15327/2019 (for Maintainability of the Petition) and C.M. 15326/2019 (Stay)

27. In view of the orders passed above in the Writ Petition, no further orders are required to be passed in the present applications and the same are accordingly dismissed.

JYOTI SINGH, J

JULY 13th , 2020
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