

ITEM NO.2 Court 3 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).1255/2019

ASHOK KUMAR AGGARWAL Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(WITH IA No. 80165/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 154198/2019 - EX-PARTE STAY, IA No. 36651/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 154199/2019 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 05-10-2020 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MS. JUSTICE INDU MALHOTRA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Vikas Singh, Sr. Adv.  
Mr Aman Vachher, Adv  
Mr Yashraj Deora, Adv  
Mr.S.K.Gupta, Adv  
Mr Varun Singh, Adv  
Mr Dhiraj, Adv  
Mr Ashutosh Dubey, Adv  
Ms. Anshu Vachher, Adv  
Mr Abhishek Chauhan, Adv  
Ms. Rajshri Dubey, Adv  
Mr. P. N. Puri, AOR

For Respondent(s) Mr. Tushar Mehta, SG  
Mr. Zoheb Hossain, Adv.  
Mr. Kanu Agarwal, Adv.  
Mr. Rajat Nair, Adv.  
Mr. Arvind Kumar Sharma, Adv.  
Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1 Aggrieved by the order of compulsory retirement dated 10 June 2019 under Fundamental Rule 56(j) of the Fundamental Rules, the petitioner has moved

these proceedings under Article 32 of the Constitution.

- 2 Before instituting these proceedings, the petitioner had filed a substantive writ petition under Article 226 of the Constitution before the High Court of Delhi. By its judgment dated 28 August 2019, the High Court dismissed the writ petition on the ground of maintainability since the petitioner had an efficacious alternative remedy available before the Central Administrative Tribunal<sup>1</sup>. Against the order of the High Court of Delhi, the petitioner filed a Special Leave Petition<sup>2</sup>. On 21 October 2019, the following order was passed in the Special Leave Petition:

“The learned senior counsel appearing for the petitioner seeks leave to withdraw this Special Leave Petition so as to avail appropriate remedy under Article 32 of the Constitution of India.

With liberty as above, the Special Leave Petition is disposed of as withdrawn.”

- 3 A substantive petition has now been filed under Article 32 of the Constitution. The Union of India has filed a counter affidavit raising a preliminary objection to the maintainability of the petition under Article 32 on the ground that the petitioner must seek recourse to the remedy available in law before the CAT.
- 4 The submission has been opposed on behalf of the petitioner by Mr Mukul Rohatgi, and Mr Vikas Singh, learned Senior counsel, who urged that in view of the liberty granted by this Court on 21 October 2019, the writ petition under Article 32 is maintainable.

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1 “CAT”  
2 SLP(C) No 22421 of 2019

- 5 In view of the decision of this Court in **L. Chandra Kumar v Union of India**<sup>3</sup>, the petitioner must seek recourse to the remedy available in law before the CAT against the order compulsorily retiring him from service. The order of this Court dated 21 October 2010 recorded the statement of the petitioner seeking to withdraw the Special Leave Petition against the judgment of the High Court of Delhi dismissing the petition under Article 226 on the same ground with liberty to file a petition under Article 32. While permitting the withdrawal of the petition, liberty was granted but the grant of liberty would not amount to an adjudication on the maintainability of a petition under Article 32 of the Constitution. The Union of India is within its rights in submitting that the petitioner must seek recourse to the remedy before the CAT. That apart, the Solicitor General has pointed out that as many as sixty four persons have been compulsorily retired and some of them have challenged similar orders of compulsory retirement and their substantive OAs are pending before the CAT.
- 6 In view of what is set out above, we are of the view that it would not be appropriate to entertain a petition under Article 32. We accordingly dismiss the petition leaving it open to the petitioner to pursue the remedy available in law before the CAT.
- 7 However, an alternative submission has been made by Mr Mukul Rohatgi to the effect that nearly twenty years have gone by in litigation instituted by the petitioner to challenge the disciplinary enquiries, suspension and prosecutions initiated against him (in which the petitioner has succeeded thus far) and the petitioner is due to retire within the space of about a year and a half. Hence, it is submitted that should the petitioner move the CAT, a direction may be given for expeditious disposal of the petition.

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3 (1997) 3 SCC 261

- 8 We consider this request of the petitioner to be appropriate and proper and direct that if the petitioner pursues his remedy before the CAT, it will expedite the disposal of the OA and endeavour to dispose it of preferably within a period of four months from the date of filing.
- 9 Pending applications, if any, stand disposed of.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**