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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 5455/2021****CDR A SWAPNA**

.....Petitioner

Through: Mr. Santhosh Krishnan and Mr.  
Ashwin Joseph, Advs.

versus

**UNION OF INDIA & ORS.**

.....Respondents

Through: Mr. Ruchir Mishra, Mr.  
Mukesh Kumar Tiwari and Ms. Reba Jena  
Mishra, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT (ORAL)**

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**29.07.2025****C. HARI SHANKAR, J.**

1. We have heard learned Counsel for the parties at length on the aspect of maintainability of this writ petition before this Court.

2. The petitioner is the Short Service Commissioned<sup>1</sup> lady officer of the Air Traffic Control<sup>2</sup> cadre of the Navy. She seeks, by the present petition, a declaration that SSC Officers of the ATC cadre in the Navy are entitled to consideration for permanent commission under the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations, 1963 read with Policy Letter dated 25 February 1999,

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<sup>1</sup> "SSC", hereinafter

<sup>2</sup> "ATC", hereinafter



issued by the Ministry of Defence.

3. Additionally, the writ petition seeks a declaration that the Naval signals and other communications from the respondents, to the contrary, be held to be illegal.

4. At the time of issuing notice in the present writ petition on 24 May 2021, this Court had noted an objection by learned Counsel for the respondents to the maintainability of the present petition before this Court, as, according to learned Counsel, it would lie before the Armed Forces Tribunal<sup>3</sup>.

5. In para 10 of the said order, this Court made it clear that, if ultimately it was found that this Court has no jurisdiction, or was not required to exercise jurisdiction under Article 226 of the Constitution of India, the consequences would follow.

6. As such, the issue of the maintainability of the present petition before this Court, given the availability of remedy before the AFT, has been kept open from day one. We deem it necessary to point this out only because one of the submissions of Mr. Santosh Krishnan, learned Counsel who appears for the petitioner is that this petition has remained pending for over four years and is ripe for final hearing. In view of the para 10 of the order dated 24 May 2021, the pendency of this petition, or the present stage of the proceedings, cannot result in

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<sup>3</sup> "AFT", hereinafter



any equities in the petitioner's favour, insofar as the aspect of maintainability of petition is concerned.

7. On the aspect of maintainability, Mr. Santosh Krishnan emphatically contends that this petition is maintainable before this Court, even if the issue of whether this Court should or should not entertain this petition may be a matter of judicial discretion.

8. We have informed him that we are not relegating the petitioner to the AFT, treating it as an alternate efficacious remedy. We are concerned with whether this Court has jurisdiction to deal with this matter at all, given the judgment of the Seven Judges' Bench of the Supreme Court in *L. Chandra Kumar v UOI*<sup>4</sup>

9. The following paragraphs from *L. Chandra Kumar* make it clear that if a service matter is amenable to adjudication by the AFT, this Court is denuded of jurisdiction in the matter, and will not entertain the petition as a Court of first instance:

"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

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<sup>4</sup> (1997) 3 SCC 261



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.*"

(Emphasis supplied)

10. Though ***L. Chandra Kumar*** was rendered in the context of the Central Administrative Tribunal<sup>5</sup>, the exposition of law in that decision clearly extends to all service Tribunals, including the AFT. Indeed, this position is no longer *res integra*, as it stands settled by a Full Bench of this Court in ***Squadron Leader Neelam Chahar v UOI & Ors***<sup>6</sup>, from which we deem it appropriate to extract the following paragraphs:

"12. In our considered view, challenge to the 'Air Headquarter Human Resource Policy No. 03/2013 "dated 28.08.2013, squarely falls within the term of" vires of statutory provisions' as held in ***L. Chandra Kumar v Union of India (supra)***. Hence, the Armed Forces Tribunal is competent to entertain the present petition and the batch of petitions which have laid challenge to various circulars, statutory rules, regulations, policies and other similar communications issued by the respondent Government and its

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<sup>5</sup> Tribunal

<sup>6</sup> WP(C) 9139/2019, decided on 26 May 2023



organs from time to time.

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14. The outcome of the entire discussion is that the Armed Forces Tribunal is competent to hear the challenge to the vires of the subordinate legislations, rules, regulations, notifications and circulars etc., as and when challenged by the affected parties."

15. In view of the above, the reference to the larger bench has been answered as under:

"The challenge to the Armed Force Human Resource Policy No. 03/2013 can be raised before the Armed Forces Tribunal functioning under the Armed Forces Tribunal Act, 2007."

16. Since, this batch of petitions is pending before this Court for a long time, it is in the interest of justice that these petitions and other similar petitioners are hereby ordered to be transferred to the Armed Forces Tribunal, Principal Bench as the petitioners have an alternative equally efficacious remedy before the said Tribunal."

11. A Division Bench of this Court, speaking through one of us, (C. Hari Shankar, J.) has, in *Chandan Kumar v UOI*<sup>7</sup> relied on *Neelam Chahar* to hold the petition, in that case, not to be maintainable before this Court.

12. Insofar as the amenability of the present dispute to adjudication by the AFT is concerned, Section 14(2)<sup>8</sup> of the AFT Act specifically entitles any person, aggrieved by an order pertaining to any service matter, to make an application to the Tribunal to have the *lis*

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<sup>7</sup> MANU/DE/1944/2025

<sup>8</sup> (2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.



adjudicated. “Service matters” is defined in Section 3(o)<sup>9</sup> of the AFT Act as meaning all matters relating to the conditions of service of persons subject to the Army Act, Navy Act or the Air Force Act (save those specifically excluded therein) and includes, within it, various categories of matters, of which clause (iv) includes “any other matter whatsoever”.

**13.** The expression “conditions of service” stands defined by the Supreme Court in *State of M.P v Shardul Singh*<sup>10</sup> to mean all conditions which governed the service of an individual from the time he is recruited into service till the time he superannuates and even thereafter, provided the right that is ventilated is relatable to the period during which the individual was in service. As such, there can be no dispute about the fact that the claim of the petitioner in this writ petition relates to her conditions of service.

**14.** That being so, the dispute that this writ petition seeks to

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<sup>9</sup> (o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) summary disposal and trials where the punishment of dismissal is awarded;
- (iv) any other matter, whatsoever, but shall not include matters relating to—
  - (i) order issued under Section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of Section 15 of the Navy Act, 1957 (62 of 1957) and Section 18 of the Air Force Act, 1950 (45 of 1950); and
  - (ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);
  - (iii) leave of any kind;
  - (iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;

<sup>10</sup> (1970) 1 SCC 108



ventilate is a “service matter” within the meaning of Section 3(o) of the AFT Act and, consequently, also within Section 14 (2) thereof.

**15.** Though Section 14(1)<sup>11</sup> excludes, from the jurisdiction of the Tribunal, the AFT, the jurisdiction which, prior to the enactment of the AFT Act, could be exercised by the Supreme Court or by High Courts under Articles 226 and 227 of the Constitution of India, Section 14(1) starts with the words “save as otherwise expressly provided in this Act”. As such, Section 14(1) has to be read subject to Section 14(2). If the dispute is amenable to adjudication by the AFT under Section 14(2), the AFT would have jurisdiction to adjudicate it.

**16.** As we have already noted earlier in this order, this is not a case of alternative jurisdiction. The sequitur to the decision in *L. Chandra Kumar* is that this Court is *coram non judice* and cannot act as a court of first instance in respect of service matters which are amenable to adjudication by the AFT or by the CAT.

**17.** We, therefore, have regrettably to express our inability to entertain this petition as a Court of first instance.

**18.** That said, we do find substance in Mr. Santosh Krishnan’s lament that this case has remained pending before this Court for four

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<sup>11</sup> **14. Jurisdiction, powers and authority in service matters. –**

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to all service matters.



and a half years and that, if the parties are relegated to start the exercise of adjudication before the AFT anew, it would result in serious hardship, especially given the nature of the dispute involved.

**19.** There is substance in the plea.

**20.** We, accordingly, direct the Registry of this Court to transmit the record of this writ petition to the AFT and request the AFT to treat it as a Transfer Application and to adjudicate it from the stage at which it stands today. Of course, should the AFT desire the parties to place any more documentation or pleadings on record, it would be within the jurisdiction of AFT to so require.

**21.** We are also of the view that the cause urged in this petition is one which is of considerable significance. The matter has remained pending with this Court for over four years as on date.

**22.** We therefore request the AFT to accord priority to this case and decide it as expeditiously as possible.

**23.** In order to expedite matters, we direct the learned Counsel for the parties to appear before the concerned Bench of the AFT on 12 August 2025.

**24.** We also direct the Registry of this Court to forthwith transmit the papers of this Court to the AFT by electronic mode or otherwise. It





2025:DHC:6229-DB



would be also open to the petitioner to submit the record of this petition to the AFT by electronic mode, so that it could be registered forthwith and taken up with all due haste and expedition.

**25.** The writ petition is disposed of in the aforesaid terms without expressing any opinion on the merits of this case.

**C. HARI SHANKAR, J**

**OM PRAKASH SHUKLA, J**

**JULY 29, 2025**/*gunn*