



2025:DHC:5944-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10101/2025

ANIRUDDHA KAR

.....Petitioner

Through: Mr. Himanshu Upadhyay and
Mr. Nishant Bharihoke, Advs.

versus

UNION OF INDIA & ORS.

.....Respondent

Through: Mr. Sandeep Tyagi, SPC with
Mr. Tarveen Singh Nanda, GP with Mr.
Mritunjay and Mr. Manish Kumar Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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22.07.2025

C. HARI SHANKAR, J.

1. The prayer clause in this writ petition reads thus:

“In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon’ble Court may be pleased to:

a) Issue a Writ of Mandamus certiorari or any another writ/order inter-alia with the direction to the Respondent to consider the case of the petitioner and grant him/them prorated pension from the date of discharge; and/or

b) Declare the pre-condition as laid down in policy dated 04.11.2022 for joining CPSE/PSU/Autonomous Bodies for grant of service pension as arbitrary, discriminatory and violative of Article 14 of Constitution of India but also in violation of Arts.16 and 21 of Constitution of India and thereby set aside the said conditions;”

c) Grant the benefit of ECHS (Employee Contributory Health Scheme) to the Petitioner at par with other Ex-



Servicemen;

Pass such other and further orders as this Hon'ble Court may deem fit in the facts of the case and in the interest of justice.”

2. In view of paras 90 and 93 of the Judgment of the Supreme Court in *L. Chandra Kumar v UOI*¹, the Armed Forces Tribunal has the jurisdiction to adjudicate on the vires of any statutory or quasi-statutory legislation except the Armed Forces Tribunal Act, 2007 itself. We may reproduce the paragraphs thus:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. *It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition* as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits

¹ (1997) 3 SCC 261



which will be of use to it in finally deciding the matter.

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.*

(Emphasis supplied)

3. We may note that the AFT has taken this view in *Ex CPL Nishant Kumar v UOI*².

4. The petitioner is a member of the Air Force. The reliefs sought in this writ petition are amenable of adjudication by the AFT.

² 2023 SCC OnLine AFT 9270



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5. If the matter falls within the jurisdiction of the AFT, there is a complete proscription on this Court acting as a Court of first instance in view of the decision in *L. Chandra Kumar*.
6. The same view has been taken by a Full Bench of this Court in *Squadron Leader Neelam Chahar v UOI*³, which has been followed by a Division Bench in *Chandan Kumar v UOI*⁴.
7. It is not a case, therefore, of alternate remedy. In respect of matters falling within the jurisdiction of the AFT, this Court is *coram non judice*, as a Court of first instance.
8. As such, we dispose of this writ petition reserving liberty with the petitioner to approach the Armed Forces Tribunal in accordance with law, seeking the reliefs sought in this writ petition.
9. The petition is accordingly disposed of.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 22, 2025

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³ Judgment dated 26 May 2023 in WP (C) 9139/2019

⁴ MANU/DE/1944/2025.