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

+ **W.P.(C) 1131/2016**

SHRI KANWAL KUMAR Petitioner
Through: Mr.Mahabir Singh, Sr. Adv. with
Mr.Pankaj Yadav & Mr.D.V.S.
Yadav, Advs.
versus

UNION OF INDIA & ANR Respondents
Through: Mr.Arun Birbal with Mr.Sanjay
Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

ORDER
% **10.02.2016**
CM No.4979/2016

Exemption is allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1131/2016 & CM No.5068/2016

1. The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India seeking following prayers:-

“ (i) issue a writ of certiorari and any other appropriate writ, order or direction quashing the impugned modification/amendment whereby a “note” was added in column 11 vide notification No. G.S.R. 943(E) dated 11.12.2003, wherein the amendment/modification was effected in the Recruitment Rules by the Respondent No.2 without any authority under the law.

(ii) issue a writ of certiorari and any other appropriate writ, order or direction quashing the impugned circular No.3 of F7(31)2003/PB-I/AD/Arch/Pt-II/223 dated 27.01.2016 whereby a Final Eligibility List of Architectural Assistants for promotion to the post of Asstt. Director (Arch.) issued by the Respondent No.2.

(iii) issue a writ of mandamus or any other appropriate writ, order or direction to the Respondent for grant of promotional benefits to the Petitioner as Asstt. Director (Arch.) before any junior level official is considered for promotion for the said post.”

2. Learned senior counsel for the petitioner submits that the petitioner joined as Arch. Draftsman with respondent No.2/DDA on 19.11.1998. The Recruitment Rules of respondent No.2 were amended vide notification No. G.S.R. 943(E) dated 11.12.2003. By the said amendment a ‘note’ in Column 11 was added which reads as “the eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in respective grade/post”.

3. Learned senior counsel for the petitioner submits that respondent No.2 issued a final seniority list for promotion to the post of Assistant Director vide circular No.28 dated 31.12.2013 wherein the petitioner was placed at serial No.1. The respondent No.2 issued a tentative eligibility list of Architectural Assistants for promotion to the post of Asstt. Director (Arch.) on 26th November 2015 wherein the petitioner was placed at Serial No.10 as compared to the final

seniority list issued on 31.12.2013. The petitioner made representation/objection vide letter dated 03.12.2015 and 28.12.2015 to respondent No.2 against the tentative eligibility list. Learned senior counsel of the petitioner further submits that respondent No.2 without considering any of the objections filed by the petitioner, issued the final seniority list on 27.01.2016.

4. At the outset, a specific query has been put to learned senior counsel for the petitioner regarding maintainability of the present petition in light of **L. Chandra Kumar vs. The Union of India & Ors., 1997(3) Scale**, wherein the Hon'ble Supreme Court held as under:-

“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 concerned High Court 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 concerned Tribunal.”

5. At this stage, learned senior counsel for the petitioner submits that in view of the law laid down by Hon’ble Supreme Court in **L. Chandra Kumar’s** case (*supra*), he may be permitted to withdraw the present petition as well as the application with liberty to file a petition before the Tribunal.

6. With the aforesaid liberty, the petition as well as application are dismissed as withdrawn.

Dasti.

V.P.VAISH, J

FEBRUARY 10, 2016/gm