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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8567/2016

NAVEEN KUMAR GAUTAM

..... Petitioner

Through: Mr. Rajesh Kumar, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, Advocate for R-1
and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% 22.12.2016

1. Issues which arise in this writ petition are between the petitioner and his employer/Union of India. Once, Union of India is the employer, all issues with respect to the service conditions or service benefits have to be decided by Central Administrative Tribunal, Principal Bench, New Delhi, including violation of various provisions/rules/circulars as held by the Supreme Court in the case of *L. Chandra Kumar vs. Union of India & Ors.* (1997) 3 SCC 261. Para 99 of this judgment reads as under:-

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, 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 323A and 323B 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 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 323A and Article 323B 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 concerned Tribunal 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 concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.” (underling added)

2. In view of the above, instead of dismissing the petition, at the request made on behalf of counsel for the petitioner, this petition is transferred for decision to Central Administrative Tribunal, Principal Bench, New Delhi.
3. Parties to appear before the Registrar, Central Administrative Tribunal on 11th January, 2017. Registry will ensure that file of this case is made available to the Registrar, Central Administrative Tribunal, on the date fixed.

VALMIKI J. MEHTA, J

DECEMBER 22, 2016

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