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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11947/2016

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21st December, 2016

ABHISHEK GARG

..... Petitioner

Through: Petitioner in person.

versus

THE UNION OF INDIA & OTHERS

..... Respondents

Through: Mr. Kamal Kant Jha, Adv. for R-1.
Ms. Eshita Baruah, Adv. for Mr.
Gaurang Kant, Adv. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner appears in person. He argues that the present writ petition under Article 226 of the Constitution of India be entertained by this Court. He places reliance upon the order dated 28.11.2016 of the Supreme Court annexed as Annexure P-14 to the writ petition and which reads as under:-

“The petitioner, who is appearing in person, seeks permission to withdraw this petition with liberty to approach the High Court.

Permission, as sought for, is granted.

Accordingly, the writ petition is dismissed as withdrawn.”

2. Petitioner admittedly is an employee of the Comptroller and Auditor General of India. The office of the Comptroller and Auditor General of India is covered in the list of institutions disputes of which with its employees and any claim with respect to service benefits can only be decided by the Central Administrative Tribunal (CAT). The Constitution Bench Judgment of the Supreme Court in the case of *L. Chandra Kumar vs. Union of India & Ors., (1997) 3 SCC 261* in para 99 has observed that this Court shall not exercise original jurisdiction and which original jurisdiction can only be exercised by CAT. This para 99 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)

3. In my opinion, when the Supreme Court in its order dated 28.11.2016 asked the petitioner, who had directly approached the Supreme Court, to file a petition in the High Court, actually the expression 'High Court' was meant to convey filing of a petition not before the Supreme Court in the first instance but before the first court of original jurisdiction. The first court of original jurisdiction in this case would be CAT and not the High Court. The expression 'High Court' used by the Supreme Court in its order dated 28.11.2016 is only for the purpose of asking the petitioner not to directly approach the Supreme Court but first go to the appropriate court, and which appropriate court is CAT in the present case.

4. Petitioner, who appears in person, still insists that this petition be entertained and notices be issued. I cannot agree. This petition is therefore dismissed with liberty to the petitioner to approach before the Central Administrative Tribunal, Principal Bench, New Delhi.

DECEMBER 21 ,2016/ib

VALMIKI J. MEHTA, J