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

+ **W.P.(C) 11575/2015**

KISHAN SINGH

..... Petitioner

Through: Mr. Manohar Pratap, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh, Advocate and
Mr. Manoj Kaushik, Advocate for
respondent Nos.1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **16.12.2016**

1. Learned counsel for the petitioner concedes that petitioner seeks reliefs with respect to services of the petitioner performed with the Union of India/Army. This writ petition therefore will not lie in this Court in view of para 99 of Constitution Bench judgment of the Supreme Court in the case of *L. Chandra Kumar vs. Union of India & Ors. (1997) 3 SCC 261*, and which 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)

2. In view of the above, counsel for the petitioner prays for and is granted liberty to withdraw this writ petition and the petitioner is entitled to approach Central Administrative Tribunal, Principal Bench, New Delhi and which will decide the petition in accordance with law.

3. Writ petition is disposed of accordingly.

VALMIKI J. MEHTA, J

DECEMBER 16, 2016

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