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

+ **W.P.(C) 7229/2016 and C.M. Appl. No. 29745/2016 (for stay)**

HEMANT KUMAR

..... Petitioner

Through: Ms. Aditi Sharma, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Archana Gaur, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **29.03.2017**

1. Petitioner seeks appointment with L.H.M. College and Smt. Suchetakriplani Hospital, New Delhi and which hospital is not an independent legal entity, but on petitioner getting employment petitioner will be the employee of Central Government/respondent no.1.

2. Accordingly, this Court has no jurisdiction to try this petition in view of the definition of service matters under Section 3(q) of the Administrative Tribunals Act, 1985 and paragraph 99 of the judgment in the case of ***L. Chandra Kumar vs. Union of India & Ors. (1997) 3 SCC 261***, and which para 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. At this stage, counsel for the petitioner prays that this petition be transferred to the Central Administrative Tribunal, Principal Bench, New Delhi.

4. Accordingly, this petition is transferred for decision to Central Administrative Tribunal, Principal Bench, New Delhi. Parties are directed to appear before the Registrar, CAT on 26th April, 2017. Registry will ensure that the file of this case is available before the Registrar, CAT on the date fixed.

VALMIKI J. MEHTA, J

MARCH 29, 2017/*AK*