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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8602/2016 & CM Nos. 35401/16(stay), 41292/16 (U/o 1 R
10 CPC by proposed petitioners) & 41293/2016 (exemption)

BHARAT KHANIJO & ORS. Petitioners
Through: Ms. Reena Jain Malhotra and Mr.
Vineet Malhotra, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms. Subha Laxmi and Ms. Poonam
Kumari, Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **09.01.2017**

1. Petitioners seek employment to the posts under the Central Government. Accordingly, this issue will be a service dispute under Section 3(q) of the Administrative Tribunals Act, 1985, and therefore, this Court would have no jurisdiction in view of the Constitution Bench judgment of the Supreme Court in the case of *L. Chandra Kumar vs. Union of India & Ors.*, (1997) 3 SCC 261 and para 99 of which 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. At this stage, counsel for the petitioners states that instead of dismissing the writ petition, this petition be transferred for decision by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. Ordered accordingly.

3. Let parties appear before the Registrar, CAT on 23.1.2017. Registry is directed to ensure that the file of this case is available to the Registrar, CAT on the date fixed.

VALMIKI J. MEHTA, J

JANUARY 09, 2017

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