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

\+ **W.P.(C) No.9186/2015**

% **16th March, 2017**

C. GOPINATHAN ..... Petitioner

Through: Ms. Pooja Dhar, Adv. and Mr. Zeeshan Diwan, Adv.

versus

OFFICE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA & ORS. ..... Respondents

Through: Ms. Biji Rajesh, Adv. for Mr. Gaurang Kanth, Adv. for R-1. Mr. A.K.Behera, and Mr. A.P.Singh, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. In this writ petition, the following reliefs are prayed:-

"A) Issue a writ of Certiorari or any other appropriate writ, order or direction, quashing the impugned Order No.G-679/CPF/AC (P)/2011 dated 29.4.2013 issued by the Respondent No.1 Office of the Comptroller & Auditor General of India;

B) Issue a writ of Certiorari or any other appropriate writ, order or direction, quashing the impugned Letter No. BMRCL/Fin/ex-DF/2014 dated 7.11.2014 issued by the Respondent No.3 Bangalore Metro Rail Corporation Ltd;

C) Issue a writ of Certiorari or any other appropriate writ, order or direction, quashing the impugned Letter No.G-698/CPF/AAC(P)/2012 dated 18.12.2014 issued by the Respondent No.1 Office of the Comptroller & Auditor General of India;

D) Issue a writ of Mandamus or any other appropriate writ, order, or direction, directing the Respondents 1 and 3 to refund to the Petitioner the sum of Rs.2,91,600/- paid by him under protest on

14.8.2015, as a consequential relief to quashing the impugned letters dated 29.4.2013, 7.11.2014 and 18.12.2014;

E) Pass such other or further orders as this Hon'ble Court may deem fit in the facts of the case."

2. Admittedly, the office of the Comptroller & Auditor General of India (CAG), and with whom the petitioner was an employee, is an organization in the list of organizations, disputes of which with its employees have to be decided by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. Prayers (A) and (C) of the writ petition which are against CAG/employer will pertain to service matters under Section 2(q) of the Administrative Tribunals Act, 1985 and therefore, this Court would have no jurisdiction to examine these service matters aspects in view of para 99 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 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. Accordingly, so far as reliefs (A) and (C) are concerned since this Court has no jurisdiction in view of the mandate of the ratio of the judgment of the Supreme Court in the case of ***L. Chandra Kumar (supra),*** this writ petition is dismissed as this Court does not have jurisdiction to decide the matter. I may add that I had put it to counsel for the petitioner that if the petitioner agrees instead of dismissing this writ petition I can transfer the petition to the CAT but the counsel for the petitioner after seeking a pass-over states that she is not having any instructions from the petitioner. Accordingly, this writ petition will stand dismissed so far as prayers (A) and (C) are concerned on account of this Court lacking jurisdiction to decide the matter as regards prayers (A) and (C) and which matter has to be decided by the CAT, Principal Bench, New Delhi.

4. So far as prayers (B) and (D) are concerned, learned counsel appearing for the respondent no.3/Bangalore Metro Rail Corporation states that petitioner was on deputation in respondent no.3/Bangalore Metro Rail Corporation from CAG and petitioner has

now completed his deputation period and stands repatriated to CAG. It is also stated that orders passed by the respondent no.3 which are subject matter of reliefs (B) and (D) are only consequential to the main orders passed by the principal employer/CAG, and in case such main orders dated 29.4.2013 and 18.12.2014 would not survive, then, the respondent no.3 would not press its letter/order dated 7.11.2014 and seek any recovery as per prayers (C) and (D) in this writ petition.

5. Also, it is noted that petitioner has already paid to the respondent no.3 the principal amount which was subject matter of the letter dated 7.11.2014 under protest, and the only relief now remains qua the respondent no.3, is respondent no.3's claim of interest on the principal amount already received by the respondent no.3. In any case, counsel for the respondent no.3 agrees that if the main order passed by CAG goes, the respondent no.3 will refund to the petitioner the amount which is paid by the petitioner to the respondent no.3, however, with liberty, and which is granted, to respondent no.3 in accordance with law to file appropriate independent proceedings for recovery of such amounts after repaying the same to the petitioner, in case the respondent no.3 has an independent cause of action to recover such amounts.

6. Accordingly, this writ petition will stand disposed of so far as prayers (B) and (D) are concerned in terms of the aforesaid observations and statement made on behalf of the respondent no.3, leaving only the issue as regards prayers (A) and (C) and with respect to which prayers, as already stated above, this Court does not have jurisdiction.

7. The writ petition is accordingly dismissed and disposed of in terms of the aforesaid observations.

MARCH 16, 2017/ib **VALMIKI J. MEHTA, J**