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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9653/2015

DARPAN SINGH AND ORS.

..... Petitioners

Through: Ms. Manisha Singh, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Suparna Srivastava, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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12.01.2017

1. Counsel for the petitioners states that that petitioners are employees of Ministry of Defence. Though, this is disputed on behalf of the respondents, however since such is the case of the petitioners as per the writ petition, and which issue will have to be adjudicated, that petitioners are or are not the employees of Ministry of Defence, and therefore the issue will be of a service matter as regards the petitioners who claim themselves to be the employees of Ministry of Defence, hence this Court will not have jurisdiction to

decide this petition in view of the ratio 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***. The relevant para 99 of this 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. Without in any manner opining as to whether or not the

petitioners are or are not the employees of Ministry of Defence, and which issue will be decided by Central Administrative Tribunal, Principal Bench, New Delhi, instead of dismissing this petition at the request made on behalf of the petitioners this petition is transferred for decision to Central Administrative Tribunal, Principal Bench, New Delhi.

3. Parties to appear before the Registrar, Central Administrative Tribunal on 7th February, 2017. Registry will ensure that file of this case is made available to the Registrar, Central Administrative Tribunal on the date fixed.

VALMIKI J. MEHTA, J

JANUARY 12, 2017

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