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

% **Decided on: 27.11.2017**

+ LPA 755/2017 and CM APPL.43185-43186/2017

SAVITUR PRASAD

..... Petitioner

Through: Mr Mohit Chaudhary, Mr Rishabh Jain and
Ms Garima Sharma, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Sanjeev Narula, CGSC and Ms A.
Chandra and Mr Abhishek Ghai, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present appeal assails the order dated 23.11.2017, whereby, Writ Petition (C) No.10404/2017 titled as "*Shri Savitur Prasad vs. Union of India*"; under Article 226 of the Constitution, instituted by the appellant, came to be dismissed by a learned Single Judge of this Court with a finding that the subject matter thereof came squarely within the jurisdiction of the Central Administrative Tribunal.

2. Mr Chaudhary, learned counsel appearing on behalf of the appellant, has invited our attention to an order dated 21.11.2017; purportedly issued in the name of the President of India, placing the appellant under suspension with immediate effect. It would be relevant to observe that the said Presidential order dated 21.11.2017 records that a case against the appellant, in respect of a criminal offence is under investigation and a

departmental case is also contemplated. It further records that the Hon'ble President of India has placed the appellant under suspension, in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

3. It is the submission of Mr Chaudhary that the said suspension order is without jurisdiction, inasmuch as, it is not authored by a Member of the Cabinet Committee of Appointments or any other competent authority, and that in view thereof, the present proceedings under Article 226 of the Constitution of India are maintainable as observed in the following decisions:-

- i. *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.* reported as (1998) 8 SCC 1
- ii. *Meenu Tomar vs. Registrar, Cooperative Societies & Ors.* reported as 230 (2016) DLT 479 (DB)
- iii. *Google Inc. & Ors. vs. Competition Commission of India & Anr.* reported as 2015 (150) DRJ 192 (DB)

4. The said impugned order dated 23.11.2017, having considered the submission made on behalf of counsel for the appellant, reiterated the dictum of Hon'ble Supreme Court of India rendered by a Constitution Bench in ***L. Chandra Kumar vs. Union of India and Ors.*** reported as (1997) 3 SCC 261, wherein it was held as follows:

"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.”

5. After considering the aforesaid decisions relied upon by the parties, the learned Single Judge came to the conclusion that the petitioner ought to be relegated before the Central Administrative Tribunal, Delhi, to avail his remedies, in accordance with law.

6. The Parliament in its infinite wisdom promulgated the Administrative Tribunal Act, 1985, whereby all the jurisdiction, powers and authority exercisable by all Courts immediately prior to the coming into effect of the said Act, in so far as it relates to service matters concerning a civilian, not being a member of All India Services, which the appellant admittedly is, are conferred exclusively on the Central Administrative Tribunals under the said Act.

7. It is also trite to state that the scope of interference by a High Court in service matters and disciplinary proceedings under Article 226 of the

Constitution of India, is permissible only in cases of demonstrable lack of jurisdiction and perversity.

8. In view of the foregoing, in our view, the present order dated 21.11.2017 does not suffer *prima facie* from a demonstrable lack of jurisdiction so as to entitle the appellant to maintain proceedings under Article 226 of the Constitution of India, particularly when an efficacious statutory remedy is available to him in law.

9. In view of the above, the impugned order dated 23.11.2017 does not warrant any interference by this Court.

10. The present appeal along with the pending applications is accordingly dismissed with no order as to costs.

**SIDDHARTH MRIDUL, J
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 27, 2017

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