



#~Full Bench-Item-1 to 8

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

Judgment Delivered On: 26.05.2023

+ **W.P.(C) 9139/2019**

SQUADRON LEADER NEELAM CHAHAR.....Petitioner

versus

UNION OF INDIA AND OTHERS..... Respondents

+ **W.P.(C) 2609/2021 & CM APPL. 34188/2021 (Delay)**

DHARMENDRA SINGH RATHORE AND ORS.

..... Petitioners

versus

UNION OF INDIA AND OTHERS..... Respondents

+ **W.P.(C) 6058/2021 & CM APPL. 19191/2021 (Stay)**

793047-S SGT DEEPAK KUMARRDO/FIT & ORS

..... Petitioners

versus

1. THE UNION OF INDIA THROUGH ITS SECRETARY & ORS..... Respondents

+ **W.P.(C) 8787/2021, CM APPL. 27353/2021 & 2822/2022**

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W.P.(C) 9139/2019

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SGT BHUPENDER SINGH AND ORS.....Petitioners

versus

UNION OF INDIA AND OTHERS..... Respondents

+ **W.P.(C) 6973/2021, CM APPL. 22031/2021 (Exemption) & 33249/2022 (Impleadment)**

793187 H SGT SATENDRA SINGH & ORS..... Petitioners

versus

THE UNION OF INDIA THROUGH ITS SECRETARY & ORS..... Respondents

+ **W.P.(C) 8507/2021 & CM APPL. 26363/2021 (Exemption)**

WG CDR SANJAY KUMAR RAI Petitioner

versus

UNION OF INDIA AND ORS. Respondents

+ **W.P.(C) 12188/2021**

WG CDR G PADMA KUMAR Petitioner

versus

UNION OF INDIA AND ORS. Respondents



+ **W.P.(C) 2729/2022 & CM APPL. 7837/2022 (Exemption)**
WG CDR KA AMEER ALI.....Petitioner

versus

UNION OF INDIA AND ORSRespondents

Advocates who appeared in this case:

For the Petitioner : Mr. Satendra Singh & Mr. Chirag Verma, Advocates in
W.P.(C) 9139/2019.
Mr. Ankur Chhibber, Advocate in W.P.(C) 2609/2021.
None in W.P.(C) 6058/2021
None in W.P.(C) 8787/2021
Mr. Sidhinath Senger & Mr. Saurabh Kumar, Advocates in
W.P.(C) 6973/2021.
None in W.P.(C) 8507/2021.
None in W.P.(C) 12188/2021.
None in W.P.(C) 2729/2022.

For the Respondents: Mr. Vikram Jetly, CGSC along with Ms. Shreya Jetly,
Advocates in W.P.(C) 9139/2019.
Mr. Anurag Ahluwalia, CGSC along with Mr. Danish Faraz
Khan, Advocate for R-1/UOI. Mr. Anil Soni, CGSC along with
Mr. Rahul Mourya, Advocate for R-1 to R-4 in W.P.(C)
2609/2021.
Mr. Harish Vidyanathan Shankar, CGSC along with Mr. Srish
Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai
Paikaday, Advocates in W.P.(C) 6058/2021.
Mr. Harish Vidyanathan Shankar, CGSC along with Mr. Srish
Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai
Paikaday, Advocates in W.P.(C) 8787/2021.
None in W.P.(C) 6973/2021.
Mr. Harish Vidyanathan Shankar, CGSC along with Mr. Srish
Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai
Paikaday, Advocates in W.P. (C) 8507/2021
None in W.P.(C) 12188/2021.
Mr. Vivek Goyal, CGSPC for UOI in W.P.(C) 2729/2022.



CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

TALWANT SINGH, J.

1. Writ petition W.P.(C) 9139/2019 was filed by the petitioner, praying for the following relief:

“9.1 A writ in the nature of certiorari or/and mandamus or any other appropriate writ, orders, directions quashing the Air Force Human Resource Policy (HRP) No. 03/2013, issued by Respondent No. 3, which is *ultra vires* and beyond his authority and also in contravention to the Air Force Orders issued by respondent No. 1 and Respondent No. 2.

Issue a writ of Mandamus or any appropriate order directing the Respondents to release the promotion of the Petitioner to the rank of Wing Commander from date of 17 Dec 2018, and grant of the all associated financial and other benefits of the promotion including an interest of 12% on the arrears as due.

Direct the Respondent No. 1 to issue instructions of permanent nature for setting the rational Minimum performance Criteria and safeguards, incorporate them in the Air Force Regulations 1964 so as to prevent any misuse of power by subordinate authority to issue contrary and illogical instructions on the matter of Air Force Officers' promotion.

Respondents No. 3 may be barred from making and circulating promotion criteria till the amendments are approved and till such time grading criteria as laid out in AFO 06 of 12 to be made as sole criteria for all substantive time scale promotions.

Award cost of the proceedings in favour of the Writ petitioner.

Pass such order or further orders as this Hon'ble Court may deem fit & proper in the facts and circumstances of the case.”



Writ petition W.P.(C) 2609/2021 was filed by the petitioner, praying for the following relief:

“1. Issue a writ of certiorari for quashing the letter dated 10.09.2020 whereby the Respondents have rejected the representation preferred by the Petitioner No. 1; and

2. Issue a writ of certiorari for quashing the Promotion Policy dated 25.08.2020 to the extent that it has inserted an additional clause in Para 23 wherein the promotion to the rank of Junior Warrant Officer (JWO) for the Petitioners and similarly situated personnel from the next batch is conditional based upon their willingness for extension of service till 26 years despite them qualifying all the other parameters and essential conditions for such promotion; and

3. Issue a writ of Mandamus directing the respondents to consider the Petitioners for promotion to the rank of Junior Warrant Officer (JWO) in the next Board of Officers (BOO) irrespective of their willingness or unwillingness for extension of service as already submitted by them, and if found fit, grant the Petitioners and similarly situated batchmates promotion to said rank of Junior Warrant Officer (JWO) with all due benefits;

4. Pass any such orders as the Hon“ble Court may deem fit in the light of above mentioned facts and circumstances of the case.”

Writ petition W.P.(C) 6058/2021 was filed by the petitioner, praying for the following relief:

“A. Issue a writ of certiorari thereby quashing of impugned para 23 of promotion policy issued vide letter No. AIR HQ/C40651/PA(CPC) dated 25 August 2020 and para 2 of amendment and addendum to promotion policy issued vide letter No AIR HQ/C 40651/PA(CPC) dated 04 Jun 21 as being arbitrary, discriminatory and unreasonable; and

B. Issue a Writ of Mandamus for grant of promotion to the petitioners in accordance with promotion policy issued vide AIR HQ/C 40651/PA(CPC) dated 14 January 2015;

C. Pass any other and further writ, orders or directions as this Hon“ble Court may deem fit, just and proper in the facts and circumstances of the case, in the interest of justice.



D. Award Cost to the petitioners throughout.”

Writ petition W.P.(C) 8787/2021 was filed by the petitioner, praying for the following relief:

“A. Quash and set aside the impugned promotion policies issued by the respondents vide Air HQ/C 40651/PA(CPC) dated 04.06.2021, 25.08.2020 and 14.01.2015 at **Annexure P-1(Colly)** to the extent of the promotion containing the criteria of compulsory extending 3 years for the purpose of promotion laid down in the impugned promotion policies declaring it as illegal, arbitrary and discriminatory.

B. Direct the respondents to grant the promotion to the petitioners in accordance with the promotion policy vide Air HQ/C 40651/PA(CPC) dated 04 January 2012 and as the names of the petitioners are figuring in promotion panel dated 04.06.2021.

C. Issue a Writ Order of Mandamus, or any other Writ Directions/Order as may be deemed just and proper in the facts and circumstances of the case.

D. Award Cost to the petitioners throughout.”

Writ petition W.P.(C) 6973/2021 was filed by the petitioner, praying for the following relief:

“1. Issue a writ of certiorari for quashing the Promotion Policy dated 25.08.2020 including its amendment dated 17 Jun 2021 to the extent that it has inserted an additional clause in Para 23 wherein the promotion to the rank of Junior Warrant Officer (JWO) for the Petitioners and similarly situated personnel from the next batch is conditional based upon their willingness for extension of service till 23 years despite them qualifying all the other parameters and essential conditions for such promotion; and

2. Issue a writ of Mandamus directing the Respondents to consider the Petitioners for promotion to the rank of Junior Warrant Officer (JWO) as per their name in the current promotion panel irrespective of their willingness or unwillingness for extension of service as already submitted by them, and if found fit and grant the Petitioners and similarly situated batchmates promotion to said rank of Junior Warrant Officer (JWO) with all due benefits in accordance with the previous promotion policy dated 14 Jan 2015.



3. Any other Writ/Directions/Order as may be deemed just and proper in the facts and circumstances of the case.”

Writ petition W.P.(C) 8507/2021 was filed by the petitioner, praying for the following relief:

“(a) To issue an appropriate writ of Certiorari, order or direction to set aside and quash discriminatory policy issued vide GoI MoD letter 2027/Dir(I)/1/98 & 14(3)/98/D(AG) dated 04.09.1998 and Letters WAC/1393/225/P2 dated 29.05.2021 and Air HQ/98962/41/PO-3 (C) dated 22.01.2021 (Annexure-P1 Colly).

(b) To issue direction to the Respondents to bring documents on record on the basis of which the Respondents have formulated the policy instruction whereby the Respondents have fixed the age of superannuation in respect of the petitioner at 54 years of age.

(c) To issue an appropriate writ of Mandamus, order or direction to direct the Respondents to allow the Petitioner to serve till completion of 57 years of age with all consequential benefits.

(d) To pass such further order or orders, direction/Directions as this Hon“ble Court may deem fit and proper in accordance with law.”

Writ petition W.P.(C) 12188/2021 was filed by the petitioner, praying for the following relief:

“(a) To issue an appropriate writ of Certiorari, order or direction to set aside and quash discriminatory policy issued vide Gol MoD letter 2027/Dir(I)/1/98 & 14(3)/98/D(AG) dated 04.09.1998 and Letters TC/1405/76/CP2 BM-II dated Aug 2021 and Air HQ/98962/49/PO-3(C) BM-1 dated 09.08.2021 (ANNEXURE P-1 Colly).

(b) To issue direction to the Respondents to bring documents on record on the basis of which the Respondents have formulated the policy instruction whereby the Respondents have fixed the age of superannuation in respect of the petitioner at 54 years of age.

(c) To issue an appropriate writ of Mandamus, order or direction to direct the Respondents to allow the Petitioner to serve till completion of 57 years of age with all consequential benefits.



(d) To pass such further order or orders, direction/Directions as this Hon^{ble} Court may deem fit and proper in accordance with law.”

Writ petition W.P.(C) 2729/2022 was filed by the petitioner, praying for the following relief:

“(a) To issue an appropriate writ of Certiorari, order or direction to set aside and quash letter no. Air HQ/98962/1/PO-3(C) BM-II dated 30.11.2021 and discriminatory policy dated 04.09.1998 (Annexure P-1).

(b) To issue direction to the Respondents to bring documents on record on the basis of which the Respondents have formulated the policy instruction whereby the Respondents have fixed the age of superannuation in respect of the petitioner at 54 years of age.

(c) To issue an appropriate writ of Mandamus, order or direction to direct the Respondents to allow the Petitioner to serve till completion of 57 years with all consequential benefits.”

2. Writ Petition (C) No. 9139/2019 is treated as lead petition. On 05.12.2019, a preliminary objection was raised by the learned counsel appearing on behalf of the official respondents and the Division Bench, before which the writ petition was listed, was pleased to pass the following order:

“1. Learned counsel for the Respondent has raised a preliminary objection asto maintainability of the present petition which seeks the following reliefs:

“9.1 A writ in the nature of certiorari or/and mandamus or any other appropriate writ, orders, directions quashing the Air Force Human Resource Policy (HRP) No. 03/2013, issued by Respondent No. 3, which is ultra vires and beyond his authority and also in contravention to the Air Force Orders issued by respondent No. 1 and Respondent No. 2.

Issue a writ of Mandamus or any appropriate order directing the Respondents to release the promotion of the Petitioner to the rank of Wing Commander from date of



17th Dec 2018, and grant of the all associated financial and other benefits of the promotion including an interest of 12% on the arrears as due. ,,

Direct the Respondent No. 1 to issue instructions of permanent nature for setting the rational Minimum performance Criteria and safeguards, incorporate them in the Air Force Regulations 1964 so as to prevent any misuse of power by subordinate authority to issue contrary and illogical instructions on the matter of Air Force Officers' promotion.

Respondents No 3 may be barred from making and circulating promotion criteria till the amendments are approved and till such time grading criteria as laid out in AFO 06 of 12 to be made as sole criteria for all substantive time scale promotions."

2. At the first hearing of the present petition on 23rd August, 2019, noting the above preliminary objection following order was passed:-

"2. Notice. Notice is accepted by Mr. Vikram Jetly, learned CGSC, for the Respondent Nos. 1 to 4/UOI.

3. A preliminary objection is raised to the maintainability of the present petition. Counsel for the Petitioner relies on an order dated 9th January 2019 passed by this Court in WP(C) 10026 of 2016 (***Govind Kumar Srivastava v. Union of India***) and urges that since the first prayer in the present writ petition challenges Air Force Human Resources Policy No.3 of 2013, applying which promotion to the Petitioner to the rank of Wing Commander has been denied, the present petition is maintainable.

4. On the next date after pleadings are complete, the Court will take up the issue of maintainability first.

5. List the matter before the Registrar on 24 September 2019 for completion of pleadings.

6. List before the Court on 5th December 2019."

3. Indeed, in the judgment dated 9th January, 2019 in ***Govind Kumar Srivastava v. Union of India*** (supra), a Division Bench (DB) of this Court has held that the challenge to a policy is not maintainable before the Armed Forces Tribunal (AFT).



4. However, learned counsel for the Respondent today has placed before the Court copy of a decision dated 26th May, 2017 by another coordinate DB of this Court in Writ Petition (Civil) 7219/2016 (***Ashit Kumar Mishra v. Union of India***) where a case relating to discrimination or violation of Article 14 of the Constitution' was held to be maintainable by the AFT. It is pointed out that in the said batch of writ petitions, prior to the above decision, the DB had by an order dated 15th May, 2017 allowed the writ petitions to be amended to include a challenge to a policy decision dated 19th February, 1987 of the Indian Air Force (IAF).

5. The Court notes that the attention of the DB which decided ***Govind Kumar Srivastava v. Union of India*** (supra) was not drawn to the earlier decision in ***Ashit Kumar Mishra v. Union of India*** (supra).

6. In that view of the matter, the Court considers it appropriate to direct that the present petition be placed before a larger Bench of 3 Hon'ble Judges to decide whether the challenge to the Armed Forces Human Resource Policy No.3/2013 can be raised before the AFT functioning under the Armed Forces Tribunal Act, 2007?

7. The present petition be placed before the Hon'ble the Chief Justice for appropriate directions."

3. In view of the said order, Hon'ble the Chief Justice was pleased to constitute a full bench to decide the following question:

"Whether the challenge to the Armed Force Human Resource Policy No. 3/2013 can be raised before the Armed Forces Tribunal (AFT) functioning under the Armed Forces Tribunal Act, 2007".

4. Later on, the other writ petitions, where the similar questions were raised, were also tagged along with W.P.(C) 9139/2019.

5. Pleadings were completed and arguments have been heard.

6. The reliance has been placed by the learned counsel appearing on behalf of the respondents on the decision of this Court in W.P.(C) 7219/2016, titled as '***Ashit Kumar Mishra v. Union of India***' and other connected petitions. The same was the case of ex-employees of Indian



Air Force, who later on got employment in Public Sector or State Government Enterprises and they had prayed for *pro-rata* pension for the years of service rendered by them in the Indian Air Force. A preliminary objection was raised by the respondents that the dispute was covered under the „service matters“ as per Section 3(o) of the Armed Forces Tribunal Act, 2007 (AFT Act) and the petitioners should approach the Armed Forces Tribunal (AFT). The Division Bench of this Court, after discussing the entire law on this aspect, came to a conclusion that the petitioners have an alternative, equally efficacious remedy and they should have invoked the jurisdiction of the AFT for examining and considering their grievances. In view of the same, the writ petitions pending before this Court were transferred to the AFT to cut short the delay.

7. On the other hand, learned counsel appearing on behalf of the petitioner, has placed reliance on the judgement dated 09.01.2019 in W.P.(C) 10026/2016, titled '**Govind Kumar Srivastava v. Union of India**'. In the said case also, learned counsel appearing on behalf of the official respondents had raised the objection regarding the jurisdiction while placing reliance on '**L. Chandra Kumar v. Union of India (1997) 3 SCC 261**' where the Hon'ble Supreme Court has specifically held that Central Administrative Tribunal (CAT) had the jurisdiction to test the *vires* of subordinate legislations and rules. Learned counsel appearing on behalf of the petitioner had relied upon an order dated 31.07.2018 passed by the Principal Bench of AFT in which it was held that challenge to the circulars cannot be entertained by AFT in terms of Section 14 of the Armed Forces Tribunal Act, 2007 as the Tribunal does not have the



power to issue writ. The relevant portion of order dated 09.01.2019 in **‘Govind Kumar Srivastava v. Union of India & Ors.’** is reproduced hereunder:

“1. As far as the preliminary objection of the Respondents to the maintainability of the present petition is concerned, the learned counsel for the Petitioner has placed before the Court an order dated 31st July 2018 passed by the Armed Forces Tribunal (AFT) Principal Bench which *inter alia* holds that the challenge to the circulars cannot be entertained by the AFT in terms of Section 14 of the Armed Forces Tribunal Act, 2017 (AFT Act) as it “does not give power of issuance of writ” to the AFT.

2. Counsel for the Respondents, on the other hand, relied upon the judgement in **L. Chandra Kumar v. Union of India (1997) 3 SCC 261** and in particular the observation in para 93, whereby, the Supreme Court recognized the power of the Central Administrative Tribunals (CATs) “to test the virus of subordinate registrations and rules.”

3. As far as the present case is concerned, challenge is laid to a letter/circular No. 8 (386)/AFT (Pension/Services) dated 19th February 1987 issued by the Ministry of Defence (MoD) to the effect that it grants the benefit of pro rata pension only to the Commissioned Officers of the Defence Services and not to the Non Commissioned Officers (NCOs)/Persons Below Officer Rank (PBOR) of the Defence Services. The challenge is, therefore, not to any subordinate legislation as such. Going by the order dated 31st July 2018 of the AFT such a challenge would not be entertained by it.

4. Consequently, the preliminary objection raised by the Respondents to the maintainability of the present petition is hereby rejected.”

8. At this point, it is pertinent to quote Section 14 of the Armed Forces Tribunal Act, 2007, which deals with the jurisdiction, power and authority of the Tribunal in service matters. The same is reproduced hereunder:

“14. Jurisdiction, powers and authority in service matters.-(1)

Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdictions, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction



under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by the *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.”

9. Section 14 of the AFT Act, 2007 is *para material* to Section 14 of the Administrative Tribunals Act, 1985, which governs the jurisdiction, powers and authority of the Central Administrative Tribunals. The same is reproduced hereunder:

“14. Jurisdiction, powers and authority of the Central



Administrative Tribunal. – (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court [***]) in relation to-

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning –
 - (i) a member of any All-India Service; or
 - (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;
- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such body, at the disposal of the Central Government for such appointment.

[*Explanation.*—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]



(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority in corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [***]) in relation to

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.”

10. In ‘**L. Chandra Kumar v. Union of India**’ (supra) in paragraph 93, the following was held:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decision of the Tribunals will be subject to



scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the views of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will so be subject to scrutiny before a Division Bench of their respective high Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

11. It is the admitted position that in the present case, the legislation under which the Armed Forces Tribunal has been created, is not under challenge. What is under challenge is the ‘Air Force Human Resource Policy No. 03/2013’ which deals with grant of substantive promotions upto the rank of Wing Commander and Group Captain (TS). The aim of the policy has been described as under:

“2. The aim of this HRP is to lay down QRs and guidelines for grant of Substantive promotions up to the rank of Wg Cdr and GpCapt (TS). The provisions contained in this policy are applicable to all Permanent Commissioned officers, Short Service Commissioned officers, Branch Commissioned officers and Service Entry Commission officers of all the Branches, other than Medical and Dental Branches.”

11.1 The policy further defines the detailed procedure for grant of substantive promotions to the stage of super-annuation and the Approving Authorities for grant, deferment, denial of substantive ranks to the Air Force officials covered by this Policy.

12. In our considered view, challenge to the ‘Air Headquarter Human



Resource Policy No. 03/2013” dated 28.08.2013, squarely falls within the term of „vires of statutory provisions’ as held in ***L. Chandra Kumar v. Union of India***’ (supra). Hence, the Armed Forces Tribunal is competent to entertain the present petition and the batch of petitions which have laid challenge to various circulars, statutory rules, regulations, policies and other similar communications issued by the respondent Government and its organs from time to time.

13. It is also pertinent to note that when order dated 09.01.2019 in W.P.(C) 10026/2016, titled ***‘Govind Kumar Srivastava v. Union of India & Ors.’*** was passed, the earlier order passed by another Division Bench of this Court in batch of petitions led by W.P.(C) 7219/2016, titled as ***‘Ashit Kumar Mishra v. Union of India & Ors.’*** dated 26.05.2017 was not brought to the notice of the bench, which passed the order dated 09.01.2019.

14. The outcome of the entire discussion is that the Armed Forces Tribunal is competent to hear the challenge to the *vires* of the subordinate legislations, rules, regulations, notifications and circulars etc., as and when challenged by the affected parties.

15. In view of the above, the reference to the larger bench has been answered as under:

“The challenge to the Armed Force Human Resource Policy No. 03/2013 can be raised before the Armed Forces Tribunal functioning under the Armed Forces Tribunal Act, 2007.

16. Since, this batch of petitions is pending before this Court for a long time, it is in the interest of justice that these petitions and other similar petitioners are hereby ordered to be transferred to the Armed



Forces Tribunal, Principal Bench as the petitioners have an alternative equally efficacious remedy before the said Tribunal.

17. The parties shall appear before the Principal Bench of the Armed Forces Appellate Tribunal on 10.07.2023.

18. It is made clear that we have not expressed any opinion regarding the merits of the claim or the prayers made in the batch of writ petitions.

19. The writ petitions and pending applications will be treated as disposed of without any order as to costs.

**TALWANT SINGH, J
(JUDGE)**

**SIDDHARTH MRIDUL, J
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

MAY 26, 2023/pa