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

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Date of Decision: 27th August, 2024+ **W.P.(C) 243/2024 & CM APPL. 1068/2024****SAURAV ANAND**

.....Petitioner

Through: Mr. R.K. Tarun, Ms. Capt. Subedita
Rani, Ms. Aditi Shivadhatri and Mr. R.R. Bharti,
Advocates.

versus

UNION PUBLIC SERVICE COMMISSION

.....Respondent

Through: Mr. Ravinder Agarwal, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner seeking the following relief:

"i. Issue a writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s, directing the Respondent to set aside/quash the order dated 16.10.2023, emanating out of debarment letter dated 05.11.2018 issued by the Respondent and the proceedings emanating therefrom, allowing the Petitioner to appear in all the future exams to be Conducted by the Respondent."

2. Aspiring to serve the Nation, Petitioner appeared in the National Defence Academy/Naval Academy Examination (II), 2018 on 09.09.2018 conducted by the Union Public Service Commission ('UPSC'), wherein he was allegedly caught possessing a mobile phone during the conduct of the examination and was taken into custody. UPSC issued a show-cause notice dated 18.09.2018 to the Petitioner in terms of Rule 5 of the NDA/NA Examination (II)-2018 Rules, calling upon him to explain why he should not



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be debarred permanently from all future examinations/ selections conducted by UPSC. Since no reply was received from the Petitioner, a reminder dated 17.10.2018 was sent to him but again there was no response. Taking into account the alleged misconduct, UPSC cancelled the candidature of the Petitioner for the examination in question and imposed the penalty of debarment from all future examinations/selections to be held by UPSC, vide order dated 05.11.2018.

3. Similar show-cause notices were issued to other candidates and some of them filed cases in this Court as well as High Courts of Bihar and Jharkhand. Raj Aryan was one of the candidates who filed W.P.(C) No.279/2019 in the High Court of Jharkhand and the Court vide common order dated 03.09.2019 in the said petition along with two other writ petitions directed UPSC to take a fresh decision. In deference to the direction, UPSC re-examined the cases of the three candidates and decided to reduce the penalty from permanent debarment to 10 years from the date of initial debarment. Not satisfied, Raj Aryan filed W.P.(C) No.202/2020 and taking a holistic view, UPSC decided to reduce the debarment period to actual period undergone.

4. A batch of writ petitions was also filed before a Division Bench of this Court with the lead matter being W.P.(C) No.1205/2019 and since UPSC had taken a lenient view in the earlier cases, the Division Bench vide order dated 22.09.2021 disposed of the writ petitions taking on record the decision of the UPSC that the penalty had been reduced to the period of debarment undergone.

5. Claiming parity with the Petitioners in the aforesaid writ petitions, Petitioner herein preferred W.P.(C) 9787/2023, which was disposed of at the



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admission stage vide order dated 26.07.2023, with liberty to file a detailed representation with UPSC with a direction to the UPSC to pass a speaking order. This representation was rejected vide order dated 16.10.2023 and aggrieved, Petitioner preferred W.P.(C) 14579/2023 assailing only the penalty order dated 05.11.2018. Since Petitioner had failed to assail the speaking order dated 16.10.2023, writ petition was dismissed vide order dated 07.11.2023. This order was not challenged by the Petitioner and attained finality. Petitioner thereafter preferred a writ petition before the Supreme Court being Writ Petition (Civil) No.1360/2023, which was dismissed at the admission stage granting liberty to assail the order dated 16.10.2023. On the strength of this order, Petitioner filed the present writ petition wherein he has laid a challenge to the debarment order dated 05.11.2018 and order dated 16.10.2023, rejecting his representation.

6. Issue notice.

7. Mr. Ravinder Agarwal, learned counsel accepts notice on behalf of the Respondent.

8. Mr. Agarwal takes a preliminary objection to the maintainability of this petition on the ground that the challenge is laid to a debarment order passed by the UPSC, which is a matter concerning recruitment and therefore, by virtue of Section 14 of the Administrative Tribunals Act, 1985 ('1985 Act') and in view of the judgment of the Constitution Bench of the Supreme Court in ***L. Chandra Kumar v. Union of India and Others*, (1997) 3 SCC 261**, remedy of the Petitioner lies before the Administrative Tribunal as the only Court of first instance. It is further argued that in the judgments in ***Kendriya Vidyalaya Sangathan and Another v. Subhas Sharma*, (2002) 4 SCC 145**; and ***Rajeev Kumar and Another v. Hemraj Singh Chauhan***



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and Others, (2010) 4 SCC 554, the Supreme Court observed that in view of the observations in *L. Chandra Kumar (supra)*, the High Court committed an error in law in directly entertaining the writ petitions concerning service matters which fall under the jurisdiction of the Administrative Tribunals.

9. Learned counsel for the Petitioner, on the other hand, submits that the present writ petition is maintainable and there is no merit in the preliminary objection. It is argued that Petitioner is neither a holder of a civil post under the Union nor a member of any civil service of the Union and is only challenging a debarment order which has nothing to do with the recruitment process and therefore, Section 14 of the 1985 Act will have no application and there is no impediment in entertaining this writ petition. In support, reliance is placed on an order dated 11.03.2024 passed by a Co-ordinate Bench of this Court in W.P.(C) 3577/2024 in case titled *Pawan Kumar v. UPSC & Anr.*, wherein Court took note of the contention of the Petitioner that despite UPSC being notified under 1985 Act, the writ petition was maintainable. Reliance is also placed on the judgment of the Supreme Court in *Central Bank of India and Others v. Dragendra Singh Jadon, (2022) 8 SCC 378*, wherein the Supreme Court observed that where an objection to the maintainability of an application/suit on an issue of law is not expressly dealt with, but the application/suit is entertained and disposed of on merits, the objection is deemed to have been rejected. The mere fact that an issue may not specifically have been dealt with or reasons not specifically disclosed for decision on that issue, would not vitiate a judgment and order that is otherwise correct, to argue that even if in the earlier rounds of litigation by the Petitioner or in the writ petitions filed by similarly placed Petitioners in the High Court of Jharkhand, an objection to the



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maintainability of those writ petitions was not specifically taken or dealt with, the orders will have a precedential value and this writ petition ought to be entertained on parity. Learned counsel further relies on a judgment of this Court in *Akul Bhargava and Others v. Union Public Service Commission and Others*, 2020 SCC OnLine Del 1376, wherein this Court entertained a writ petition despite an objection that the jurisdiction was with the Administrative Tribunal. Learned counsel also refers to a litigation by one similarly placed candidate Abhishek Shandil, who had approached the High Court, where an objection was taken to the maintainability on the ground that the remedy of the Petitioner was before the Administrative Tribunal after which he had approached the Tribunal at Patna and finally, the Supreme Court in Writ Petition (Civil) No.512/2024 vide order dated 20.08.2024 had granted permission to the Petitioner to approach the jurisdictional High Court dismissing the petition as withdrawn.

10. Heard learned counsels for the parties and examined their submissions on the maintainability of this petition.

11. Indisputably, Petitioner has raised a challenge to a penalty order dated 05.11.2018 whereby he was debarred by UPSC from future examinations/selections as well as order dated 16.10.2023 rejecting the representation. There is also no dispute that the impugned orders emanate out of the alleged misconduct committed by the Petitioner during NDA/NA Examination (II), 2018 conducted by UPSC for recruitment to the Armed Forces. To my mind, challenge to a debarment order, is an issue which concerns the recruitment process for which the examination was held by the UPSC. Section 14 of 1985 Act provides that on and from the appointed day, the Central Administrative Tribunal shall exercise all jurisdiction, powers and authority



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exercisable immediately before that day by all Courts, except the Supreme Court, in relation to 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, etc. For ready reference, relevant part of Section 14 is extracted 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;”

12. In my view, the expression ‘matters concerning recruitment’ will include a challenge to an order of debarment by an examination conducting agency and will be covered under Section 14 of the 1985 Act. Once the remedy of the Petitioner lies before the Administrative Tribunal, the only other issue required to be examined is whether this writ petition can be entertained bypassing the said remedy. The answer to this question need not detain this Court and stands settled by the Supreme Court in ***L. Chandra Kumar (supra)***, holding that while the powers of judicial review of the High Courts under Articles 226/227 of the Constitution cannot wholly be excluded, however, Administrative Tribunals will continue to act as the only Courts of first instance in respect of the areas of law, for which they have been constituted and it will not be open for litigants to directly approach the High Courts. Relevant paragraphs are as follows:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles



226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain case* [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will



be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. *We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.*

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 decisions 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 vires 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 also 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.***

94. *The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial*



proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

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*99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, 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 323-A and 323-B 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 a 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 323-A and Article 323-B 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 Tribunal concerned 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 Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”***

(Emphasis supplied)

13. There is no doubt that where there is a right there is a remedy ‘*ubi jus ibi remedium*’ and often the path to remedy is a vexed and complex question, but in the present case, in view of the binding dictum of the Supreme Court, the remedy of the Petitioner clearly lies before Central Administrative Tribunal.

14. Learned counsel for UPSC rightly urged that in the past, whenever the High Courts have entertained writ petitions concerning service matters which fall under the jurisdiction of the Administrative Tribunals, the



Supreme Court has held that the High Courts have committed an error in law. In this context, I may allude to the judgment of the Supreme Court in ***Kendriya Vidyalaya (supra)***, relevant passages of which are as follows:-

“11. To appreciate the second submission of Mr Ahmed, we extract below relevant portions from paragraphs 93 and 99 of the decision of the Constitution Bench of this Court in L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] : (SCC pp. 309 & 311, paras 93 & 99)

“93. ... 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.

99. ... 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 Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

12. The Constitution Bench of this Court has clearly held that tribunals set up under the Act shall continue to act as the only courts of first instance “in respect of areas of law for which they have been constituted”. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

13. In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the Circuit Bench in the State of Jammu and Kashmir for disposal in accordance with law.”



15. In **Rajeev Kumar (supra)**, the Supreme Court observed as under:

“9. The Constitution Bench in L. Chandra Kumar [(1997) 3 SCC 261: 1997 SCC (L&S) 577] held that the power of the High Court under Articles 226 and 227 of the Constitution and of this Court under Article 32 of the Constitution is a part of the basic structure of our Constitution (see paras 78 and 79, pp. 301 and 302 of the Report). The Constitution Bench also held that various tribunals created under Articles 323-A and 323-B of the Constitution, will function as court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular tribunal.

10. In para 93, at p. 309 of the Report, the Constitution Bench specifically held: (L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577])

“93. ... 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.”

(emphasis added)

The Constitution Bench explained the said statement of law by reiterating in the next sentence: (L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] , SCC p. 309, para 93)

“93. ... 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. On a proper reading of the abovequoted two sentences, it is clear:

(a) The tribunals will function as the only court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court “overlooking the jurisdiction of the tribunal”.

12. The aforesaid propositions have been repeated again by the Constitution Bench (in L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577]) in the penultimate para 99 at p. 311 of the Report in the following words:



“99. ... 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 Tribunal concerned.”

13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted.”

16. I may note that Division Benches and learned Single Judges of this Court have in the past not entertained writ petitions where Petitioners bypassed the remedy of approaching the Administrative Tribunals in service matters where they were amenable to the jurisdiction of the Tribunal and illustratively, I may refer to the decisions in ***Government of NCT of Delhi and Another v. Sh. Ashok Kumar Rajdev and Others***, 2023 SCC OnLine Del 5864; ***Piyush Tyagi v. Kendriya Vidyalaya Sangathan***, 2023 SCC OnLine Del 6666; ***Dr. Arun Kumar Mishra v. Union of India***, 2021 SCC OnLine Del 3841; ***Sh. Vinay Brij Singh v. Union of India and Another***, 2021 SCC OnLine Del 1369 and ***Ex. Hav. Ranjit Singh v. Inspector General of Prisons & Ors.***, W.P. (C) 2128/1997, decided on 11.03.2008.

17. Learned counsel for the Petitioner placed heavy reliance on the judgment of this Court in ***Akul Bhargava (supra)***, where learned Single Judge of this Court had entertained the writ petition on the ground that there was an evident malaise in the selection process and where the Court finds that the selection mechanism is being impeded, it cannot turn a blind eye to



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the same and interference by a Constitutional Court under Article 226 of the Constitution, is warranted. The decision was upheld by the Division Bench but in an appeal filed by the State of Rajasthan being Civil Appeal No.2553/2022, the Supreme Court observed that the view of the High Court was difficult to sustain since the first designated forum was the Central Administrative Tribunal. Therefore, this judgment cannot aid the Petitioner.

18. Learned counsel for the Petitioner relied on an order dated 11.03.2024 in **Pawan Kumar (supra)**, however, the order is a short order only recording the contention of the counsel for the Petitioner therein that despite the fact that UPSC falls in the list of institutions covered under Section 14 of 1985 Act, this Court can entertain a writ petition and thereafter the matter was adjourned to 15.03.2024. Mr. Agarwal apprises the Court that finally this writ petition was withdrawn by the Petitioner and there was no adjudication on the aspect of maintainability. It is thus not understood how this order helps the Petitioner. Much emphasis was laid on the litigation by Abhishek Shandil, who approached the Patna High Court and the Central Administrative Tribunal, Patna as well as the Supreme Court. Learned counsel submits that in the said case, the writ petition before the Supreme Court was dismissed as withdrawn, however, liberty was granted to the Petitioner to approach the jurisdictional High Court, which implies that it is the High Court which is the appropriate forum to adjudicate upon the issue of debarment. In my view, none of the orders relied on can help the Petitioner. The order of the Supreme Court has to be read and understood in light of the judgment of the Constitution Bench in **L. Chandra Kumar (supra)**, to mean a High Court exercising power of judicial review over the



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order of the Administrative Tribunal, having territorial jurisdiction in the matter and cannot be construed to mean that the Supreme Court intended to confer jurisdiction upon this Court, which it does not have. Insofar as the Petitioner places reliance on the several orders passed by the High Court of Jharkhand and the Division Bench of this Court, wherein similarly placed candidates had challenged debarment orders, suffice would it be to note that objection to the maintainability of these writ petitions was neither raised nor decided by the respective Courts and significantly they were disposed of recording the stand of the UPSC that the period of debarment had been reduced. Similar is the position with regard to orders passed in the case of the Petitioner in the earlier rounds of litigation. W.P.(C) 9787/2023 was disposed of with liberty to make a representation to UPSC, which was made and rejected. W.P.(C) 14579/2023 was dismissed as there was no challenge to the order dated 16.10.2023, whereby representation was rejected. Petitioner thereafter approached the Supreme Court directly in a writ petition and the same was dismissed on 13.12.2023, granting liberty to challenge the order dated 16.10.2023. None of these orders indicate that there was any adjudication on the question of the maintainability, in view of the remedy before the Administrative Tribunal. In ***Central Bank of India (supra)***, on which reliance is placed by the Petitioner, the Supreme Court observed that where an objection to the maintainability of an application/suit on an issue of law is not expressly dealt with but the application/suit is entertained and disposed of on merits, the objection is deemed to have been rejected. There is no cavil to this legal proposition. However, the Petitioner cannot seek benefit of this observation for the reason that in all the cases relied on by the Petitioner, wherein similar candidates filed writ petitions,



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neither an objection on maintainability was raised nor decided and significantly, they were not decided on merits.

19. Accordingly, the writ petition is dismissed with liberty to the Petitioner to approach the appropriate forum in accordance with law making it clear that this Court has not expressed any opinion on the merits of the case. Pending application also stands disposed of.

JYOTI SINGH, J

AUGUST 27, 2024
B.S. Rohella/kks/shivam