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

\+ LPA 971/2024 and CM APPL. 57044/2024, 57045/2024 and 57046/2024

PARIKSHIT GREWAL & ORS. .....Appellants

Through: Ms. Anushree Kapadia, Mr. M. Thirupathi Reddy and Ms. Ekta Kundu, Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Piyush Beriwal, SPC with Mr. Jitender Kumar Tripathi, GP and Ms. Ojashi, Advocates for R1

Ms. Pankhuri Shrivastava and Ms. Atreya G.C., Advocates for R2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% 27.09.2024

C. HARI SHANKAR, J.

1. It is a matter of some discomfiture to this Court that, nearly three decades after seven Hon'ble Judges of the Supreme Court clearly held, in the near-iconic decision in ***L. Chandra Kumar v UOI***[1], that all matters which lay within the province of the Central Administrative Tribunal[2] by virtue of Section 14[3] of the

[1] **(1997) 3 SCC 261**

[2] "the Tribunal" hereinafter

[3] **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—

Administrative Tribunals Act, 1985[4] would have to be agitated before the Tribunal and that the High Court *could not act as a court of first instance* in such cases, petition after petition is still preferred in the High Court, in clear violation of the judgment. Every possible argument in the book is pressed into service, to somehow avoid ***L Chandra Kumar***. Exceptions, not to be found either in Section 14 of the AT Act or in the judgment in ***L Chandra Kumar***, are sought to be read into it by implication. In the process, both Article 141[5] and 144[6]

(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 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 or 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.

[4] "the AT Act" hereinafter

[5] **141. Law declared by Supreme Court to be binding on all courts**. – The law declared by the Supreme Court shall be binding on all courts within the territory of India.

[6] **144. Civil and judicial authorities to act in aid of the Supreme Court**. – All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

of the Constitution of India are consigned to oblivion.

2. This is yet one other such case, in which the appellants have sought to avoid approaching the Tribunal and have petitioned this Court, in a matter which clearly falls within Section 14 of the AT Act. A learned Single Judge of this Court has, in a detailed and well-considered judgment, clearly disapproved the attempt, and has dismissed the petition as not maintainable in view of ***L Chandra Kumar***. Instead of approaching the Tribunal, as they could, and should, have, the appellants have sought to appeal against the decision of the learned Single Judge. Of course, they are certainly entitled to appeal; but, in the process, the chance of, perhaps, obtaining relief from the right forum, is frittered away.

Facts

3. The appellants are candidates who undertook an examination for recruitment to the posts of Examiner of Patents & Designs Group A (Gazetted), in the office of the Controller General of Patents, Designs and Trademarks[7], Department for Promotion of Industry and Internal Trade[8], Ministry of Commerce and Industry. The examination was initiated by the office of the CGPDTM, and conducting of the examination was assigned to the National Testing Agency[9], which stands impleaded as Respondent 2 before the learned Single Judge as well as in the present appeal.

[7] "CGPDTM" hereinafter
[8] "DPIIT" hereinafter
[9] "the NTA", hereinafter

4. The NTA conducted the Preliminary Examination on 21 December 2023 and Paper 1 and Paper 2 of the Mains Examination on 25 January 2024. Certain students, who would not undertake the Main Examination, were permitted to re-attempt the Main Examination on 5 February 2024. We may note, at this juncture, the contention of Ms. Kapadia, learned counsel for the appellants, that this additional opportunity granted to certain students was illegal as they had been "privately invited" to undertake the examination.

5. Be that as it may, the results of the Mains Examination were announced on 26 March 2024. Offline interviews were conducted between 1 April and 26 April 2024. The final score card of the candidates was released by the NTA by a Public Notice on 15 June 2024.

6. The petitioners instituted WP (C) 6743/2024 before this Court alleging that there were certain irregularities in the process of the examination conducted by the NTA. Among the irregularities alleged were irregularities and allotment of centres; absence of any clarity on negative marking in Paper I of the Mains paper; non-disclosure of Paper II of the Mains paper or its answer key; and non-declaration of results and cut-offs for the examinations, interviews and merit lists, among others. The petitioners, therefore, prayed that the result of the Mains Examination, announced on 26 March 2024, as well as the final score card announced on 15 June 2024 and the final result announced on 16 June 2024, be quashed and set aside, and the respondents be directed to reconduct the Mains Examination.

7. Objections were raised by the respondents before the learned Single Judge, before whom the writ petition was listed, to the maintainability of the petition before this Court. It was contended that the petitioners could not have approached this Court in view of Section 14(1) of the AT Act, which conferred exclusive jurisdiction, on the Tribunal in respect of recruitment and matters concerning recruitment to any civil post under the Union. Reliance was also placed on the decision in ***L. Chandra Kumar.*** Additional reliance was placed on subsequent decisions of the Supreme Court in ***Kendriya Vidyalaya Sangathan v Subhas Sharma***[10], ***Rajeev Kumar v Hemraj Singh Chauhan***[11] and ***Praveen Sharma v UPSC***[12]**.**

8. The objections of the respondents found favour with the learned Single Judge who proceeded to dismiss the writ petition on the ground that the petitioners would have to approach the Tribunal to ventilate their grievances.

L. Chandra Kumar, deconstructed

9. It would be appropriate, before proceeding further, to understand what exactly the Supreme Court, in ***L Chandra Kumar***, held. For this, we do not intend to advert to the sequence of proceedings which led to the matter being placed before seven Hon'ble Judges of the Supreme Court. They can easily be understood by a reading of the decision in ***L. Chandra Kumar*** itself, and the learned Single Judge has, in the impugned judgment, also referred to it

[10] **(2002) 4 SCC 145**
[11] **(2010) 4 SCC 554**

in some detail. We, therefore, intend only to note what exactly has been held in the ***L. Chandra Kumar*** decision, and the circumstances in which the Supreme Court has done so.

10. The Supreme Court observed, at the outset, that the Tribunal was created in terms of Article 323-A[13] of the Constitution. Thereafter, in para 49 of the report, the Supreme Court set out some relevant provisions of the AT Act, adverted to certain decisions rendered in the context of the said Act and distilled the submissions of learned Counsel before it. The analysis of the issues involved, in the judgment, commenced from para 51. The first issue addressed by the Supreme Court was whether judicial review constitutes part of the basic structure of the Constitution, in which case, applying the ratio in ***Kesavananda Bharati v State of Kerala***[14], any law, which compromised on the power of judicial review, would be unconstitutional. Paras 78 and 79 of the report addressed this issue:

> "78**.** The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. [See Chapter VII, "The Judiciary and the Social Revolution" in Granville Austin, The Indian Constitution : Cornerstone of a Nation, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts

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[12] **2007 SCC Online Del 2086**

[13] **323-A. Administrative tribunals**. –

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government.

[14] **(1973) 4 SCC 225**

were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. *We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.*

79**.** *We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.*"

(Emphasis supplied)

Having so read the power of judicial review of legislative or executive action vested in the High Courts and the Supreme Court to be part of the basic structure of the Constitution, the report went on to observe,

in para 80, that "there is no constitutional prohibition against their (Tribunals) performing a supplemental – as opposed to a substitutional – role in this respect". Deriving support from Article 32(3)[15] of the Constitution in that regard, the Supreme Court went on, in para 81, to hold:

> "81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. *So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution*. It is to be remembered that, apart from the authorisation that flows from Articles 323-A and 323-B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose."
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> (Emphasis supplied)

11. From paras 81 to 89, the Supreme Court flagged the issue of the alarming state of pendency of matters in the High Courts as one of the reasons why it was necessary to preserve the conferment of jurisdiction on Tribunals. Thereafter, in para 90, the report addressed "the issue of exclusion of the power of judicial review of the High Courts". After holding that "the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded", the Supreme Court rejected the contention that Tribunals be allowed to adjudicate only

[15] (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

on matters in which constitutional issues were not raised, and particularly not to be allowed to adjudicate upon matters where the vires of legislations were in question. As the Supreme Court held, "*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, observed the Supreme Court, even in these special branches of law, certain provisions of the Constitution would invariably, arise for consideration; for instance, in service matters, Articles 14, 15 and 16 would routinely be pressed into service. Rather than excluding such issues from the purview of the jurisdiction of Tribunals, therefore, the better alternative was found to be subjection of the decisions rendered by the Tribunals to judicial review by the High Court under Article 226/227 of the Constitution. This, it was observed, would "ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal". Keeping in view these factors, and following the proposal, mooted in its earlier decision in ***R.K. Jain v UOI***[16], 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 and the Tribunal falls, be pursued", the Supreme Court went on to hold, in para 91 of the report, that "all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to 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". This was clarified, in para 92, by further holding that

[16] **(1993) 4 SCC 119**

"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". Para 93 of the report proceeded to summarise the conclusions, in the judgment, on the jurisdictional powers of Tribunals, thus:

> "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*."
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> (Emphasis supplied)

12. Thus, the Supreme Court clarified, in terms as unequivocal as could be, that it would not be open to a litigant to approach the High Court in matters relating to the areas of law in which the Tribunal

concerned is constituted, and that the Tribunal would continue to act as the court of first instance in all such matters, the only exception being where the very legislation under which the Tribunal is constituted is challenged. In other words, save and except for cases in which the litigant challenges one or the other provision of the AT Act, it is not open to the litigant to approach the High Court in the first instance, in respect of matters which the Central Administrative Tribunal is competent to adjudicate; in other words, in respect of matters which fall within the purview of Article 14 of the Constitution. In all such matters, the Central Administrative Tribunal would be the only court of first instance, available to the litigant.

13. Para 99 of the report summarises the judgment, in the proverbial nutshell, thus:

> "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)

14. *Thus, the position in law is clear as crystal. All matters, which fall within the purview of Section 14 of the AT Act have first to be agitated before the Tribunal. It is the Tribunal alone which can entertain these matters, as a court of first instance. The litigant is completely proscribed from approaching the High Court in such matters, without first approaching the Tribunal. The only circumstance in which the litigant can approach the High Court, without first approaching the Tribunal, is where the litigation challenges the vires of the AT Act itself, or of one or the other of its provisions.*

15. It is completely befuddling, therefore, to see petitions, which clearly fall within the scope and ambit of Section 14 of the AT Act, being directly filed in the High Court. Going by the number of such petitions which are still coming up before this Court itself, the malaise is reaching endemic proportions. Without meaning any disrespect to High Courts which may choose to entertain such petitions, these stray examples, if any, cannot derogate from the position in law so unequivocally stated by seven Hon'ble Judges of the Supreme Court in ***L. Chandra kumar***.

The impugned judgment

16. The learned Single Judge has, in the impugned judgment, traced the entire history of the factual and legal position which led up to the judgment in ***L. Chandra Kumar,*** including the earlier decision of the Supreme Court in ***S.P. Sampath Kumar v UOI***[17] and other associated decisions.

17. The judgment of the learned Single Judge may be conveniently compartmentalized.

18. The learned Single Judge has first held that the jurisdiction of the Tribunal is not restricted only to employees or persons who are *in* Government service, as it also covers disputes relating to recruitment and matters concerning recruitment for entry into Government service. The submissions of the appellants – as the petitioners before the learned Single Judge – that as they were not employees holding any civil post as yet, they could approach this Court was, therefore, rejected. In this context, the learned Single Judge has gone into the definition of the expressions "selection" and "recruitment" and has relied in that context on the judgment of the Supreme Court in ***A.P. Public Service Commission, Hyderabad v B. Sarat Chandra***[18]. The learned Single Judge has held that "any challenge relating to any stage of the recruitment process, post the issuance of the advertisement would fall under 'recruitment and matters concerning recruitment' under Section 14 of the AT Act and the remedy of the petitioners would lie before the Tribunal as the only Court of first instance". The relevant passage from the impugned judgment may be reproduced:

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[17] (1985) 4 SCC 458
[18] (1990) 2 SCC 669

"11. *There is no dispute that the challenge in the present writ petitions is to the examination conducted by NTA and it is equally undisputed that examination was conducted for the purpose of recruitment to the posts of Examiner of Patents & Designs*. Section 14 of the 1985 Act provides that the Tribunal will exercise jurisdiction 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 or to a post connected with defence or in the defence services being in either case, a post filled by a civilian. The expression 'selection/recruitment' has been subject matter of judicial scrutiny in several cases and *it has been held that issue of advertisement is the commencement point of a recruitment/selection process.* In ***A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra***[19], *the Supreme Court observed that process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. It consists of various steps like inviting applications, scrutiny thereof and rejection of defective applications and elimination of ineligible candidates, conducting examinations, calling for interview and preparation of list of successful candidates. Therefore, there can be no doubt that the selection/recruitment process begins with the issuance of advertisement* and in this context, I may also refer to a judgment of the Division Bench of this Court in ***Ms. Shaloo Batra v. High Court of Delhi***[20] and of Madhya Pradesh High Court in ***Kishor v. State of M.P.***[21].

12. Applying the aforesaid principles to the facts of the present cases, *the recruitment process began on 11.12.2023 when CGPDTM issued Recruitment Notification and therefore, any challenge relating to any stage of the recruitment process, post the issuance of the advertisement would fall under 'recruitment' and 'matters concerning recruitment' under Section 14 of the 1985 Act and the remedy of the Petitioners would lie before the Tribunal as the only Court of first instance. Needless to state that a challenge to an examination on the ground that there are alleged irregularities and malpractices will be a challenge to the recruitment process and no exception can be carved out on the ground that there are large scale irregularities, impacting number of candidates or that the integrity of public examination is paramount to uphold the standards of recruitment process*. In ***Praveen Sharma(supra)***, a similar conundrum was resolved by the Court holding that a competitive examination is a condition precedent for appointment to an All-India Service or post or a civil post and the examination, therefore, is a part of the process of recruitment. Reference was made to the decision of the Division

[19] **(1990) 2 SCC 669**
[20] **2013 SCC OnLine Del 1745**
[21] **2022 SCC OnLine MP 5442**

Bench of the Allahabad High Court in ***Sudhanshu Tripathi v. Union of India***[22], where it was held that a dispute arising out of an examination conducted by the UPSC directly concerned the recruitment to All-India service and could be entertained only by the Administrative Tribunals in view of Section 14 of the 1985 Act. Examining the issue, this Court held that *the expression used in Section 14 is not just 'recruitment' but 'recruitment and matters concerning recruitment' and therefore, disputes concerning eligibility of candidates, etc. in relation to examination processes will be matters within the domain of the Administrative Tribunal as the only Court of first instance.* Reliance was also placed by the Court on the earlier decisions of this Court in ***Pranay Kumar Soni v. The Chairman, U.P.S.C.***[23], and ***Neeraj Kansal v. Union Public Service Commission***[24]. Relevant passages from the judgment in ***Praveen Sharma (supra)*** are as follows:—

> "19. It is apparent that the Supreme Court, while keeping the powers conferred on the High Courts under Article 226/227 intact inasmuch as it was part of the inviolable basic structure of the Constitution, observed that the Tribunals may perform a supplemental role in discharging the powers conferred by the aforesaid Articles. The Supreme Court also observed that the decisions of such Tribunals would, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals would, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted and that it would not 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. In this context it becomes necessary to examine the provisions of Section 14 of the Administrative Tribunals Act, 1985 which indicates the areas of law for which the Tribunal has been constituted.
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> 20. The expression that is relevant in the present case is "recruitment, and matters concerning recruitment". In ***S. Tripathi v. Union of India*** a Division Bench of the Allahabad High Court (Lucknow Bench) held that the

[22] **1988 SCC OnLine All 936**
[23] **2003 SCC OnLine Del 387**
[24] **W.P. (C) Nos. 7824-32/2006, decided on 05.10.2006**

examination conducted by the UPSC for the purposes of the All India Services including the Indian Administrative Service, was part of the recruitment process. The Court held as under:—

> "7. It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, at least, to the Indian Administrative Service as indicated in the petition, is made on the basis of the result of the competitive examination held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.
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> 8. In view of the provisions contained in Section 14, since the dispute raised in the present petition directly concerns the recruitment to All India Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal."

21. This finding of the Allahabad High Court has been approved by successive learned Single Judges of this Court in ***Pranay Kumar Soni (supra)*** and ***Neeraj Kansal (supra)***. It is, therefore, clear that the UPSC examination is part of the recruitment process.

22. The question that arises in the present case is whether the issues involved herein can be regarded as relating to the examination conducted by the UPSC. This question emerges in the context that there is no challenge to the examination conducted in 2006. Insofar as the 2005 examinations are concerned, that is over. And, the petitioner does not stake any claim in respect thereof because he could not complete that examination as a result of circumstances beyond his control. By way of this petition, the petitioner is seeking a direction from this Court declaring his appearance in the 2005 examination to be disregarded as an attempt. The issue here is not so much with regard to the conduct of the examinations but with regard to the petitioner's eligibility to sit in the examination. Had it been a matter where the examination itself was in question, it would clearly fall within the ratio of the decisions in ***Pranay Kumar Soni (supra)*** and ***Neeraj Kansal (supra)***, which in turn followed ***S. Tripathi (supra)***.

> Here the issue is with regard to eligibility. In my view, the expression used in Section 14 of the Administrative Tribunals Act, 1985 is not just "recruitment" but "recruitment, and matters concerning recruitment". Had the expression only been "recruitment", there could have been some debate as to whether a condition of eligibility was a part of recruitment. But the expression used in Section 14 is of much wider amplitude inasmuch as it also refers to "matters concerning recruitment". An eligibility condition would definitely, in my view, fall within the scope of this expression. The question in the present writ petition is whether the petitioner was eligible or not to sit for the 2006 examinations. That is certainly a matter concerning recruitment. Accordingly, the Central Administrative Tribunal would, in view of the Supreme Court decision in ***L. Chandra Kumar (supra)***, have to function like the court of the first instance with regard to the question of eligibility raised in the present case because this is the precise area of law for which the Tribunal has been constituted, as indicated by Section 14(1)(a) of the Administrative Tribunals Act, 1985. It would, therefore, not be open to the petitioner to directly approach this Court and, therefore, it would be appropriate if the petitioner is directed to first approach the Central Administrative Tribunal which, indeed, has jurisdiction to adjudicate upon the issue of eligibility raised by the petitioner herein."
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> 13. In light of Section 14(1) of the 1985 Act and the observations of the Courts in the aforementioned judgments, this Court is unable to agree with the Petitioners that the disputes arising from the examination conducted by NTA even if it relates to alleged irregularities therein would not be disputes concerning recruitment and matters concerning recruitment and are not amenable to the jurisdiction of the Administrative Tribunal."
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> (Emphasis supplied)

19. The second segment of the impugned judgment of the learned Single Judge specifically adverts to the Supreme Court directive, in ***L. Chandra Kumar*** that a person who was ventilating a cause of action which was amenable to the jurisdiction of the Tribunal has to necessarily approach the Tribunal in that regard and this Court could not exercise jurisdiction as a Court of first instance in the matter. The learned Single Judge has noted the fact that there is an express

proscription against the Court entertaining such disputes as a court of first instance. Paras 20 to 22 of the impugned judgment, which so hold, read (omitting the passages from ***L. Chandra Kumar***, the relevant parts of which have already been reproduced *supra*):

> "20. Having held that powers of judicial review of the High Court under Articles 226/227 of the Constitution cannot wholly be excluded and highlighting the need to have Administrative Tribunals for adjudication of service matters as an alternative mechanism, the Supreme Court observed that 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 even in cases where they question the vires of statutory legislations, except where the legislation which creates the particular Tribunal is challenged. Relevant paragraphs are as follows:—
>
> *****
>
> 21. The principles that can be broadly culled out from a reading of these passages are:
>
> (a) Power of judicial review of the High Courts under Articles 226/227 cannot wholly be excluded;
>
> (b) Tribunals are competent to hear matters where the vires of statutory provisions and subordinate Legislations are questioned. However, in discharging this duty, they cannot act as substitutes for the Supreme Court and the High Courts, which have under the Constitutional set up specifically been 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;
>
> (c) Tribunal shall not entertain any question regarding vires of the parent Statute under which it is created on the principle that being a creature of an Act, it cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly; and
>
> *(d) The Tribunals shall continue to act as the Courts of first instance in respect of the areas of law for which they had been constituted. It is not open for litigants to directly approach the High Courts even in cases where they*

> *question the vires of statutory provisions and Legislations, by overlooking the jurisdiction of the Tribunal.*
>
> 22. From a reading of the aforementioned judgment of the Constitution Bench, the inexorable and inevitable conclusion is that albeit powers of the High Courts under Articles 226/227 are a part of the inviolable basic structure of the Constitution and cannot be excluded, but in 'service matters' as defined under Section 3(q) as also matters relating to recruitment and concerning recruitment provided under Section 14 of the 1985 Act, Tribunal is the only Court of first instance and with respect to areas of law for which the Tribunals are created, litigants cannot approach the High Courts directly. All decisions of the Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court, within whose jurisdiction Tribunal concerned falls. 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 Petitioners clearly lies before the Administrative Tribunal."
>
> (Emphasis supplied)

20. The next segment of the judgment of the learned Single Judge deals with decisions where High Courts had entertained such writ petitions dealing with recruitment and matters relating to recruitment, despite the judgment in ***L. Chandra Kumar***, and the Supreme Court has specifically disapproved the approach of the High Courts. *Inter alia*, in this regard, the learned Single Judge has referred to the decisions in ***Kendriya Vidyalaya Sangathan*** and ***Rajeev Kumar***. In ***Kendriya Vidyalaya Sangathan***, the Supreme Court held:

> 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."
>
> (Emphasis supplied)

Paras 11 and 13 of ***Rajeev Kumar*** held, in a similar vein, thus:

> "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.
>
> *****
>
> 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."

21. In the fourth segment of her judgment, the learned Single Judge has referred to the decisions of this Court in ***GNCTD v Ashok Kumar***

Rajdev[25], ***Piyush Tyagi v Kendriya Vidyalaya Sangathan***[26], ***Dr. Arun Kumar Mishra v UOI***[27], ***Vinay Brij Singh v UOI***[28] and ***Ex. Hav. Ranjit Singh v Inspector General of Prisons***[29], where similar petitions were *not* entertained following ***L. Chandra Kumar***.

22. The learned Single Judge has also gone on to advert to a judgment of another learned Single Judge of this Court in ***Akul Bhargava v UPSC***[30] in which the Court had condescended to entertain the writ petition on the ground that there was malice in the selection process, observing that, if the Court found that the entire selection mechanism was impeded, it could not turn a blind eye thereto and had necessarily to interfere under Article 226 of the Constitution of India. This decision was upheld by the Division Bench of this Court. However, on an appeal to the Supreme Court, the decision was reversed and it was held that the designated forum to be approached in such cases was the Tribunal.

23. The fifth segment of the judgment of the learned Single Judge deals with the contention of the petitioners that the examination was being conducted by the NTA and the NTA was outside the jurisdiction of the Tribunal. The learned Single Judge has held that the NTA was merely an organization to which the conducting of the examination had been outsourced, and the examination was nonetheless an examination held for recruitment to a civil post. The mere fact that the

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[25] **2023 SCC Online Del 5864**
[26] **2023 SCC Online Del 6666**
[27] **2021 SCC Online Del 3841**
[28] **2021 SCC Online Del 1369**
[29] **WP (C) 2128/1997,** decided on 11 March 2008
[30] **2020 SCC Online Del 1376**

examination was conducted under the agency of the NTA has been held by the learned Single Judge not to be a factor which would permit the petitioners to approach this Court in the first instance, oblivious of the decision in ***L. Chandra Kumar.***

24. The petitioners have, in the writ petition, taken serious exception to this finding of the learned Single Judge, contending that the NTA cannot be regarded as the "agency" of the respondents, and was an independent outside body, not amenable to the jurisdiction of the Tribunal. We do not think that the submission, though facially attractive, really entrenches on the correctness of the impugned judgment of the learned Single Judge. The reference to the NTA as an agency of the respondent cannot, in our view, be understood to be a reference to the concept of agency as understood in a contract. What is intended to be conveyed, by the learned Single Judge, in our opinion, is the fact – which cannot be denied – that the examination is in fact held by Respondent 1, albeit through the "agency" of the NTA. The 2023 Recruitment Notification, inviting applications for the post of Examiner of Patents and Designs and containing all details of the selection process, including holding of the examination, was issued by the office of the CGPDTM. All details of the examination, including the mode of application, fees to be paid, relaxations available, and the like, were contained in the Notification. The Notification went on, pertinently, to state thus:

> "CGPDTM intends to recruit Examiners of Patents and Designs, General Central Service, Group 'A' Gazetted (Non-Ministerial) in Level 10 in Pay Matrix (₹ 56,100 – 1,77,500) plus applicable allowances, as admissible, in the Government of India."

The Notification also set out the entire scheme of the Examination.

25. Clearly, therefore, the examination was being held by the CGPDTM, and the mere fact that the NTA was recruited to conduct it would not alter this position. There can, therefore, be no cavil with the observation of the learned Single Judge that the NTA was, to that extent, the agency of the CGPDTM in conducting of the examination.

26. In any event, this distinction is not of significant import, as, at the end of the day, the examination related to recruitment to the post of Examiner of Patents, which was a civil post under the Union within the meaning of Section 14 of the AT Act. Any *lis* pertaining to the examination, or its results or outcome, was, therefore, a "matter concerning recruitment" within the meaning of Section 14(1)(a) and, consequently, amenable to adjudication by the learned Tribunal. Ergo, it could not have been urged before this Court in the first instance.

27. The final segment of the impugned judgment again addresses the appellants' contention that they are not employees of any Government Department. The learned Single Judge has, in this context, noted that the judgment of the Supreme Court in ***L. Chandra Kumar*** in para 99 has specifically observed that it would not be open to litigants to directly approach the High Court even in cases where the vires of statutory legislations was under challenge. She has held once again that as Section 14 of the AT Act also covers challenges to recruitment and the matters relating to recruitment to civil posts under the Union, it would also cover the cases where the person is seeking

employment to a civil post and is not yet an employee.

28. To our mind, the impugned judgment of the learned Single Judge is unexceptionable. We find ourselves entirely in agreement with her.

29. We have heard Ms. Kapadia, learned counsel for the appellants, on the challenge to the impugned judgment, at some length. Ms. Kapadia submits that this Court should exercise jurisdiction as the entire examination was tainted; the petitioners were not employees, and, though a few petitioners have approached this Court, there would be several others who are similarly circumstanced; the relief in the petition does not seek employment to any post and only challenges a tainted public examination, while it was still in progress; the challenge in the petition did not pertain to conditions of service; the case would fall within the scope of para 10 of the judgment of the Supreme Court in ***T K Rangarajan v Government of Tamil Nadu***[31]; and other such petitions have been entertained by this Court. Para 10 of ***Rangarajan***, we may note, reads thus:

> "10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, *in a case like this*, *if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause.* Hence, as stated earlier, *because of* ***very very exceptional*** *circumstance that arose in the present case*, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."
>
> (Emphasis supplied)

30. None of these contentions, in our view, compel us to find any

fault in the impugned judgment of the learned single judge.

31. High Courts cannot read exceptions into a judgment of the Supreme Court. Any such attempt would be an affront to Article 141 of the Constitution of India. There is nothing either in the AT Act or in the judgment of the Supreme Court in ***L Chandra Kumar*** which excepts the jurisdiction of the Tribunal in a case where an examination is tainted or where there are a large number of petitioners or applicants who have to approach the Tribunal.

32. This Court is personally aware of several cases in which hundreds of applicants have joined together to approach the Tribunal. In fact, Rule 4(5)[32] of the Central Administrative Tribunal (Procedure) Rules, 1987, permits more than one person to file a joint application before the learned Tribunal, subject to leave being granted by the learned Tribunal therefore. Applications are routinely filed before the Tribunal for permitting such applicants to join together and ventilate a common cause of action.

33. The AT Act has, therefore, ample provisions to deal with situations in which a large number of persons may need to join together to file a common application, maintaining a common cause of action. The fact that the number of the applicants is considerable, is, therefore, not a ground on which this Court can start entertaining petitions under Article 226, ignoring the jurisdiction of the Tribunal.

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[31] **(2003) 6 SCC 581**

[32] (5)(a) Notwithstanding anything contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause and the nature of relief prayed for that they have a common interest in the matter.

One need not, therefore, let one's imagination boggle merely because of the number of candidates who may jointly be seeking judicial redress.

34. Apart from that, it would also amount to this Court reading into the judgment of ***L. Chandra Kumar*** an exception in a situation where the number of applicants is considerable. We would be the last to embark on any such misadventure.

35. It is true that where there are extenuating circumstances in which the Court finds *that the Tribunal would not be in a position to render substantial justice*, then, *in a very very exceptional case* (the significance of the use of the two "very"s by the Supreme Court cannot be overlooked) – to employ the super-superlative expression used by the Supreme Court in para 10 of ***T K Rangarajan*** – the Court would exercise jurisdiction. These circumstances, however, have to be such *as would indicate that the Tribunal would not be in a position to render justice in the matter*. They have also to be "*very very exceptional"*. In ***T K Rangarajan***, the unprecedented decision of the Government of Tamil Nadu to terminate the services of thousands of employees who went on strike was found to be one such "very very exceptional circumstance".

36. As against this, the circumstances that Ms. Kapadia has sought to advert to are the fact that there was a discrepancy in admit cards, with admit cards having been issued in two rounds, there was a discrepancy in the negative marking which was followed in the Paper I of the Mains Examination, there was no public disclosure of the

paper, the results were not declared, resulting in candidates not being aware of the cut-off marks and there was no public disclosure of the candidates who were invited to appear in the second round of the Mains Examination. None of these, in our view, are matters which the Tribunal would be incompetent or unable to adjudicate upon.

37. When examining the aspect of whether the Tribunal would not be able to render justice, in our view, the Court must be aware that the Tribunal is peopled by competent and experienced officers. Every Bench of the Tribunal consists of a judicial member and an administrative member. The judicial member has necessarily to be a person who is eligible to be appointed as a judge of this Court. The administrative member normally tends, these days, to be an officer who has retired from the rank of Secretary of the Government of India. They are, therefore, persons of experience, who have knowledge of the intricacies of administrative law both from the legal and the practical stand point. Without taking names, this Court is aware of several Administrative Members of the Tribunal in the past who have been as judicious as judges of constitutional Courts. There is no reason, therefore, for this Court to undermine the competence of the members of the Tribunal, or to adopt a view that the Tribunal is in anyway inferior or incompetent to this Court or less able to deal with complex administrative and service issues than this Court.

38. In that view of the matter, the factors that Ms. Kapadia has highlighted cannot be regarded as such as could convince this Court that justice could not have been dispensed by the Tribunal.

39. Ms. Kapadia also sought to rely on Article 323-A(1)[33] of the Constitution of India. She submits that the words "of persons appointed to public services and posts in connection with the Union or of any State" as employed in Article 323-A(1) have to be read along with both the preceding expressions "recruitment" and "conditions of service". So read, she would suggest that only matters relating to recruitment of persons *appointed to posts in connection with the Union* would fall within the territory of the Tribunal's jurisdiction, and not cases of persons who are yet to be appointed.

40. That, in our view would not be a proper way of reading Article 323-A(1). In our view, Article 323-A(1) empowers the Parliament to, by law, provide for adjudication, by Administrative Tribunals, of disputes and complaints which fall into one of the two categories envisaged therein. The first category is disputes and complaints with respect to recruitment and the second category is disputes and complaints with respect to the conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. The words "appointed to public services and posts in connection with the affairs of the Union", in our view, would ordinarily apply only to persons who have already been appointed. By providing for including complaints with respect to recruitment within the ambit of Tribunals created under Article 323-A(1), the Constitution, in our view, clearly envisaged matters which dealt with

[33] **323-A. Administrative tribunals**. –
(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government.

all aspects of recruitment to public services and posts in connection with the affairs of the Union or of the States to be adjudicated by Tribunals appointed under the said Article.

41. Besides, as the learned Single Judge has correctly noted, Section 14 of the AT Act is clear in this regard. It empowers the Tribunal to exercise jurisdiction, powers and authority in relation to recruitment and matters concerning recruitment to a civil post under the Union. Besides the fact that the words "recruitment" and "matters concerning recruitment" are themselves compendious in their scope and ambit, the words "in relation to" expand the reach of the expressions till further. The Supreme Court has, in various decisions, held that the expression "in relation to" is very wide in scope, and would include matters which have any relationship with the matters which are particularised thereafter. In ***T.N. Kalyana Mandapam Association v UOI***[34], the Supreme Court held, apropos the expression "in relation to":

> "47. … In fact, a wide range of services is included in the definition of taxable services as far as mandap-keepers are concerned. The said definition includes services provided "*in relation to use of mandap in any manner*" and includes "*the facilities provided to the client in relation to such use*" and also the services "*rendered as a caterer*". The phrase "*in relation to*" has been construed by this Court to be of the widest amplitude. In ***Doypack Systems (P) Ltd. v. Union of India***[35], this Court observed as under:
>
> > The expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provision, are used in the expansive sense. The expression "arising out of" has been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. The words "pertaining to" and "in relation to"

[34] **(2004) 5 SCC 632**
[35] **(1988) 2 SCC 299**

> have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate". The term "relate" is also defined as meaning to bring into association or connection with. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject-matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context. (SCC p. 329, paras 48-50)
>
> 48. In ***Renusagar Power Co. Ltd. v General Electric Co.***[36] this Court observed as under:
>
> > "25. (2) Expressions such as 'arising out of' or 'in respect of' or 'in connection with' or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

42. Once, therefore, Section 14(1)(a) employs both the expressions "in relation to" and "concerning", by providing that the learned Tribunal shall exercise all the jurisdiction, powers and authority exercisable … by all courts … *in relation to* recruitment and matters *concerning* recruitment … to a civil post under the Union", any *lis*, having *any relationship to*, or *in any manner concerned with*, recruitment to a civil post under the Union, would be covered by the provision, even if the relationship or concern is superficially distant.

43. The *lis* forming subject matter of the writ petition instituted by the petitioners before this Court would unquestionably fall within the peripheries of the jurisdiction of the learned Tribunal, as so understood.

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[36] **(1984) 4 SCC 679**

Conclusion

44. Thus viewed, we are in entire agreement with the learned Single judge that the present petition ought to have been preferred before the appropriate bench of the Central Administrative Tribunal.

45. We do not, therefore, find that any case exists even for issuing notice in this appeal.

46. The appeal is accordingly dismissed

C.HARI SHANKAR, J

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 27, 2024/yg

Click here to check corrigendum, if any