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

+ **W.P.(C) 18008/2024**

LAXMI PRASAD

.....Petitioner

Through: Mr. Akshit Sachdeva and Mr Arun Kumar, Advocates.

versus

**CENTRAL PUBLIC WORKS DEPARTMENT
& ANR.**

.....Respondents

Through: Ms. Sangita Malhotra, Sr. Panel Counsel with Mr. Tarveen Singh Nanda, Government Pleader and Ms. Pallavi Talwar, Advocate for UOI.

Ms. Avni Singh, Advocate for R2.

Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Mr. N.K. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat, Mr. Amitoj Chadha, Advocates with Dr. Kumar Narender Mohan, DDU Hospital, CMO, NFSG.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER
24.12.2024**

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CM APPL. 76591/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 18008/2024 and CM APPL. 76590/2024

3. This writ petition is preferred on behalf of the Petitioner laying a challenge to communication dated 19.10.2024 issued by Respondent No.2 as also to O.M. dated 21.11.2024 issued by Respondent No.1, rejecting



Petitioner's application for grant of family pension. Direction is sought to Respondent No.1 to release the family pension in favour of the Petitioner for life as a disabled son of the deceased employee of Respondent No.1.

4. At the outset, learned counsels for the Respondents take a preliminary objection to the maintainability of this writ petition on the ground that the remedy of the Petitioner lies before the Central Administrative Tribunal ('Tribunal') under Section 14(1) of the Administrative Tribunals Act, 1985 ('1985 Act') in light 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, considering that Central Public Works Department, against which relief is sought is amenable to the jurisdiction of the Tribunal.

5. Learned counsel for the Petitioner submits that the objection has no merit and the writ petition is maintainable as the jurisdiction of the High Court under Article 226 of the Constitution can never be ousted even where there exists an alternate remedy. He further submits that Petitioner in the present writ petition seeks family pension after the death of his father and is himself not a holder of civil post. To support this plea, learned counsel emphasises on the provisions of Section 14 of the 1985 Act as also on the expression 'his' in Section 3(q) of the said Act. The argument is that only a holder of a civil post can approach the Tribunal in relation to 'his' service matter and in this context relies on the judgment of the High Court of Himachal Pradesh in *Harmesh Singh v. State of H.P. & Ors.*, 2007 SCC OnLine HP 207 as also of the Bombay High Court in *Bashnurbi wd/o Sherkhan v. Division Accounts Officer, M.G. Sought Central Railway, Secunderabad*, 1991 SCC OnLine Bom 475. The second and the only other



argument is that Respondent No.2, i.e., Disability Board, South-West is not notified under Section 14 of the 1985 Act.

6. Before proceeding to deal with the respective contentions of the parties on the preliminary objection, I may first allude to the judgment of the Supreme Court in *L. Chandra Kumar (supra)*, wherein the Supreme Court observed that jurisdiction conferred upon the High Courts under Articles 226/227 of the Constitution of India and upon the Supreme Court under Article 32 is a part of the inviolable basic structure of the Constitution and while this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers. It was also observed that the Tribunals created under Articles 323-A and 323-B are possessed of the competence to test the constitutional validity of statutory provisions, however, all decisions of these Tribunals will be subject to scrutiny before the jurisdictional High Court. Significantly, the Supreme Court observed that the Tribunals will continue to act like Courts of first instance in respect of areas of law for which they have been constituted and it will not be open for litigants to directly approach the High Courts. Relevant passage from the judgment is as follows:

“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.”

7. I may also allude to the observations of the Supreme Court in ***Kendriya Vidyalaya Sangathan and Another v. Subhas Sharma, (2002) 4 SCC 145***, which are as follows:

“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.”

8. In paragraphs 11 to 13 of the judgment in ***Rajeev Kumar and Another v. Hemraj Singh Chauhan and Others, (2010) 4 SCC 554***, the Supreme Court in a similar vein observed as under:

“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.”

9. Recently, a Division Bench of this Court in ***Parikshit Grewal and Others v. Union of India and Another***, 2024 SCC OnLine Del 6939, painfully observed that it is a matter of some discomfiture that nearly three decades after seven Hon’ble Judges of the Supreme Court clearly held, in the near-iconic decision in ***L. Chandra Kumar*** (*supra*), that all matters which lay within the province of the Tribunal by virtue of Section 14 of the 1985 Act, would have to be agitated before the Tribunal and 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 (supra)*, exceptions not to be found either in Section 14 of the 1985 Act or in the judgment in *L. Chandra Kumar (supra)*, are sought to be read into them by implication and in the process, both Articles 141 and 144 of the Constitution of India are consigned to oblivion.

10. From the above conspectus of the judgments, there can be no quarrel with the proposition that in areas where the Tribunals have jurisdiction, only the Tribunal can act as a Court of first instance and litigants cannot approach the High Court directly. Despite this, as noticed by the Division Bench, petition after petition is filed before the High Court.

11. Coming to the argument of the Petitioner that Disability Board is not notified under Section 14 of the 1985 Act, the same has no merit for the reason that the Disability Board is constituted by the Deen Dayal Upadhyay Hospital as confirmed by counsel for Respondent No.2 during the course of hearing, which in turn is under the administrative control of the Government of NCT of Delhi and therefore requires no separate notification.

12. Coming to the argument that claim for family pension does not fall under the expression 'service matter', as defined under Section 3(q) and/or that the Petitioner is not a holder of the civil post, this argument cannot be accepted. Pension is paid to an employee for rendering minimum years of service with the employer where the establishment in question has pension scheme/rules. There can be no debate that pension is a part of the service condition and therefore a service matter. When an employee retires on rendering pensionable service, he is entitled to receipt of pension and when the pensioner dies, his family becomes entitled to family pension as per the family pension rules. It cannot be therefore said that while pension is a



service benefit, family pension is not. In fact, Petitioner himself claims family pension under the CCS Pension Rules, 2021. As a matter of record and fact family pension matters are filed before the Tribunals and only writ petitions against the orders of the Tribunals are entertained by the Division Benches of the High Courts and in this context, I may allude to some orders of the Division Benches of this Court in *UOI & Ors. v. Shakuntala, 2014 SCC OnLine Del 3647; Delhi Development Authority v. Usha Rani, 2016 SCC OnLine Del 5829* and *Mahesh Kumar Sharma v. Union of India and Others, 2023 SCC OnLine Del 4835*. In so far as the judgment of the Himachal Pradesh High Court in *Harmesh Singh (supra)* is concerned, a bare perusal of the judgment shows that the judgment in *L. Chandra Kumar (supra)* was not brought to the notice of the High Court and in so far as the judgment in *Bashnurbi wd/o Sherkhan (supra)* is concerned, the same was delivered in 1991, i.e., prior to the judgment of the Supreme Court in *L. Chandra Kumar (supra)* and it needs no reiteration that in view of the judgment of the Constitution Bench of the Supreme Court, this Court cannot entertain the petition relying on the judgments cited by the Petitioner.

13. Writ petition is accordingly dismissed with liberty to the Petitioner to take recourse to appropriate remedies in law.

14. Pending application stands disposed of.

JYOTI SINGH, J

DECEMBER 24, 2024/jg