



2025:DHC:1950-DB



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

+ **W.P.(C) 3006/2025**

CHANDAN KUMAR

.....Petitioner

Through: Mr. Ankur Chhibber, Mr. Nikunj Arora, Mr. Anshuman Mehrotra, Mr. Arjun Panwar and Ms. Muskaan Dutta, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Jaswinder Singh, Sr. PC with Sgt. Manish Kumar Singh and Sgt. Mritunjay, Air Force Legal Cell

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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24.03.2025

C.HARI SHANKAR, J.

1. The petitioner, in this writ petition, seeks pro rata pension for the service of 9 years and 1 month rendered by him in the Indian Air Force¹. The prayer clause in the writ petition reads thus:

“That In light of the submissions made hereinabove, the petitioner most humbly prays before this Hon'ble Court to kindly:

i. Issue a Writ of Certiorari for quashing of letter dated 09.01.2025 whereby Petitioner's representation dated 06.12.2024 seeking pro-rata pension for his 9 years and 1 month of Service was rejected; and

ii. Issue a Writ of Mandamus directing the Respondent to condone the shortfall of II months in service of the Petitioner in

Signature Not Verified¹ “IAF”, hereinafter

Digitally Signed By: AWP.(C) 3006/2025

KUMAR

Signing Date: 25.03.2025

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terms of Respondents' order dated 14.08.2001 and grant Pro-Rata Pension to the petitioner accordingly w.e.f. date of his discharge alongwith arrears; and

(iii) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. Mr. Jaswinder Singh, learned Senior Panel Counsel for the respondents raised a preliminary objection to the entertainment of this writ petition by this Court, as, according to him, the *lis* was amenable to adjudication by the Armed Forces Tribunal², before which the petitioner had an equally efficacious alternate remedy.

3. In that view of the matter, this Court had listed the case for hearing on the aspect of whether we should entertain this writ petition when an equally efficacious alternate remedy is available.

4. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioner and Mr. Jaswinder Singh, learned Senior Panel Counsel for the respondents, at length.

5. Mr. Jaswinder Singh has drawn our attention to various decisions, but we deem it necessary only to refer to the judgment of a Full Bench of this Court in *Squadron Leader Neelam Chahar v UOI*³. In that case, a batch of writ petitions have been referred to the Full Bench of this Court with the question for determination being formulated thus, as reproduced in para 3 of the judgment of the Full Bench:

² "the Tribunal", hereinafter

³ Judgment dated 26 May 2023 in WP(C) 9139/2019



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

6. The *lis* before this Court, in that case, was with respect to a challenge to the Air Headquarter Human Resource Policy No.03/2013 dated 28 August 2013. Apparently, the necessity of the adjudication of the issue by a Full Bench was felt because of the fact that the challenge was launched against a policy of the respondents.

7. The Full Bench, in para 12 of its judgment, held that, in view of the decision of Seven Judges Bench of the Supreme Court in *L. Chandra Kumar v UOI*⁴, a challenge to the policy of the Air Headquarter was also amenable to adjudication by the Tribunal. We may reproduce paras 12 and 14 of the judgment of the Full Bench thus:

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

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

8. Accordingly, in para 15 of the judgment, the Full Bench



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answered the question posed to it thus:

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

9. Though the issue referred to the Full Bench for determination was only as to whether the Tribunal did, or did not, have jurisdiction to decide a challenge to the policy of the Air Force, the Full Bench did not stop at answering the said question but proceeded, in para 16 of its judgment, to direct as under:

“16. Since, this batch of petitions is pending before this Court for a long time, it is in the interest of justice that these petitions and other similar petitioners are hereby ordered to be transferred to the Armed Forces Tribunal, Principal Bench as the petitioners have an alternative equally efficacious remedy before the said Tribunal.”

10. Thus, the Full Bench of this Court has taken a conscious decision that, in a matter which is amenable to adjudication by the Tribunal, the petitioner should be relegated to the said remedy, and should not be permitted to ventilate the grievance under Article 226 of the Constitution before this Court.

11. There is wealth of precedent on the aspect of entertainability of the writ petition under Article 226 in the face of an equally efficacious alternate remedy being available. Though there are certain exceptional situations in which the Supreme Court has permitted such writ petitions to be filed, the general trend of thought is that, ordinarily, a party should not be permitted to directly approach the High Court under Article 226, bypassing the statutorily stipulated remedy.



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12. In any event, as the Full Bench of this Court has pronounced on the issue, in para 16 of the judgment in *Squadron Leader Neelam Chahar*, it is no longer *res integra*, so far as we are concerned.

13. Mr. Chhibber sought to place reliance on the judgment of a Division Bench of this Court in *Brijlal Kumar v UOI*⁵.

14. Though, in *Brijlal Kumar*, which involved a similar challenge, this Court was inclined to allow the writ petition to be entertained, that decision was rendered when the judgment of the Full Bench in *Squadron Leader Neelam Chahar* had yet to be rendered. In *Brijlal Kumar*, the Division Bench has noticed at several places that the matter was pending adjudication before the Full Bench. Nonetheless, as there was no interdiction on deciding the matter, the Division Bench proceeded to hold that the writ petitions could be entertained.

15. We also note that one of the grounds on which the Division Bench felt that the writ petitions could be entertained was because the Tribunal had already decided a similar issue against the applicants in its decision in *Ex. Corporal Mohitosh Kumar Sharma v UOI*⁶.

16. Mr. Jaswinder Singh points out, however, that the decision in *Ex. Corporal Mohitosh Kumar Sharma* was reversed by this Court. Mr Chhibber, too, acknowledges this position.

17. We find that, however, in the judgment of the Division Bench

⁵ 2020 SCC OnLine Del 1477
⁶ 29 September 2020 in TA 1/2017



in **Brijlal Kumar**, the Court has, in para 44(O), observed thus:

“44 (O) Though the order of the AFT in **Ex. Corporal Mohitosh Kumar Sharma** supra being contrary to the dicta of this Court in **Govind Kumar Srivastava**⁷, **Mohammad Israr Khan**⁸ and **Rakesh Kumar**⁹ supra deserves no weightage but for the sake of completeness, we proceed to deal therewith.”

Thereafter, the Division Bench has proceeded to hold in favour of the petitioners in **Brijlal Kumar** who were also seeking the benefit of pro rata pension.

18. Thus, it appears that the extent, to which the judgment of the Tribunal in **Ex. Corporal Mohitosh Kumar Sharma** can now be followed in the present case, is debatable.

19. In that view of the matter, we are of the opinion, following the view adopted in para 16 of the judgment of the Full Bench in **Squadron Leader Neelam Chahar**, that it would not be appropriate for this Court to entertain this writ petition as the petitioners have an equally efficacious alternate remedy before the Tribunal in terms of Section 14 of the Armed Forces Tribunal Act, 2007.

20. We, therefore, dispose of this writ petition by permitting the petitioner to agitate his grievance before the Tribunal.

21. We, however, do not deem it necessary to require the petitioner to file a fresh application before the Tribunal. The petitioner would be

⁷ **Govind Kumar Srivastava v. Union of India**, 2019 SCC OnLine Del 6425

⁸ Judgment dated 11 December, 2019 in WP(C) 5642

⁹ **Rakesh Kumar v. Union of India**, 2020 SCC OnLine Del 288



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entitled to present the present petition before the Tribunal, which would treat the petition as an Original Application and proceed to deal with it in accordance with law.

22. Notice would be deemed to have been issued on the present petition on merits.

23. The respondent is directed to file its reply to the present petition before the Tribunal within three weeks from today.

24. We request the Tribunal to take a decision in the matter as expeditiously as possible.

25. The Registry is, therefore, directed to return the papers to the petitioner so that they could be presented before the Tribunal which would fix an appropriate date for hearing in the matter.

26. The writ petition is, accordingly, disposed of in the above terms, without expressing any opinion on the merits of the dispute between the parties.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 24, 2025/aky

Click here to check corrigendum, if any