



2026:DHC:3855-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5992/2026, CM APPLs. 29366/2026 & 29367/2026
LT. COL. PANDAPPA KOTAGIPetitioner
Through: Mr. Ankur Malik, Adv.

versus
UNION OF INDIA AND ORSRespondents
Through: Dr. Vijendra Mahndiyan,
CGSC for UOI with Major Anish
Muralidhar (Army)
Mr. Harshit Joshi, GP

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)
05.05.2026

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1. The prayer clause in this writ petition reads as under:

“In the premises aforesaid, it is most respectfully prayed that this Hon’ble Court may be pleased to:

a) Issue an appropriate writ, order or direction declaring that Sections 14, 21, 30 and 33 of the Armed Forces Tribunal Act, 2007, insofar as they are interpreted or applied so as to exclude or substantially restrict the exercise of jurisdiction by this Hon’ble Court under Article 226 of the Constitution in cases involving enforcement of fundamental rights and systemic discrimination, are unconstitutional and violative of the basic structure of the Constitution, and in the alternative read down the said provisions so as to preserve the Petitioner’s right to maintain the present writ petition

b) Declare that the present writ petition is maintainable before this Hon’ble Court under Article 226 of the Constitution and that the Petitioner cannot be relegated to the Armed Forces Tribunal in view of the constitutional



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challenge raised herein

c) Declare that the differential treatment accorded to SCO 2007 batch officers vis-à-vis Regular 2007 batch Engineer officers, by deferring their No. 3 Selection Board beyond the judicially accepted offset and thereby causing batch-wide prejudice, is violative of Articles 14 and 16(1) of the Constitution.

d) Direct that, in the event of the Petitioner being found entitled to promotion upon a constitutionally compliant consideration, his seniority shall be fixed appropriately so as to neutralize the prejudice caused by the impugned delay, including consideration for notional seniority vis-à-vis the Regular Engineer officers of the 2007 batch

e) Direct the Respondents to preserve and produce the complete original records relating to the No. 3 Selection Board process concerning the SCO Engineers 2007 batch, including comparative grading data, criteria applied, board papers, vacancy calculations, paramount-card entries, CR/Technical Report correspondence, and any policy or note-sheet concerning the offset issue.

f) Issue a writ of certiorari or any other appropriate writ quashing the impugned promotion outcome/result dated 27.03.2026 insofar as it denies empanelment to the Petitioner and/or insofar as it is founded on an unconstitutional and arbitrary process.

g) Issue a writ of mandamus directing the Respondents to convene and hold a fresh, constitutionally compliant consideration/Selection Board in respect of the Petitioner and similarly situated SCO 2007 batch officers, after rectifying and completing the Petitioner's entire record, including but not limited to the technical-report periods from 24.07.2019 to 31.05.2021 and the civil educational qualifications already submitted.

h) Pending disposal of the writ petition, stay the operation and further effect of the impugned promotion result dated 27.03.2026 insofar as it affects the Petitioner and similarly situated SCO 2007 batch officers, and further restrain the Respondents from creating irreversible equities adverse to the Petitioner.



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i) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. It is clear that prayers (b) to (h) are amenable to the jurisdiction of the Armed Forces Tribunal¹ under Section 14² of the Armed Forces Tribunal Act, 2007³ read with Section 2(o) of the AFT Act.

3. We have heard Mr. Malik, learned Counsel for the petitioner.

4. To our mind, the inclusion of prayer (a) in this writ petition is merely a strained effort at seeking to bypass the jurisdiction of the AFT and perforce invoke the jurisdiction of this Court.

5. This is clearly impermissible in view of the law laid down by

¹ "AFT", hereinafter

² 14. **Jurisdiction, powers and authority in service matters.—**

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

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

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

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

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

(f) reviewing its decisions;

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

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

(i) any other matter which may be prescribed by the Central Government. (5) The Tribunal shall decide both questions of law and facts that may be raised before it.

³ "AFT Act", hereinafter



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the Supreme Court in *L. Chandra Kumar v. UOI*⁴ and *UOI v. Parashotam Dass*⁵ read with the judgment of the Full Bench of this Court in *Squadron Leader Neelam Chahar v. UOI*⁶.

6. Mr. Malik's contention is that, where violation of fundamental rights is involved, the matter has to be decided by the High Court and not by the AFT.

7. The submission has merely to be stated to be rejected. Every service matter involves violation of Articles 14 and 16 of the Constitution of India, which are fundamental rights. To a query from the Court as to whether it is Mr. Malik's contention that the AFT is incompetent to decide matters involving violation of fundamental rights, his contention is that certain cases of violation of fundamental rights involving "systemic, cumulative and continuing discrimination" should be decided by the High Court.

8. We are unaware of any such principle in law. There cannot be any distinction, so far as the jurisdiction of the AFT is concerned, between cases involving discrimination *per se* and "systemic, cumulative and continuing discrimination".

9. We do not see why the petitioner cannot approach the AFT, even if it is his case that there is "systemic, cumulative and continuing discrimination".

⁴ (1997) 3 SCC 261

⁵ (2025) 5 SCC 786

⁶ Judgment dated 26 May 2023 in WP (C) 9139/2019



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10. We, therefore, also queried of Mr. Malik as to whether he is willing to abandon prayer (a) in this petition and move the AFT for enforcing prayers (e) to (h).

11. He submits that his client is not willing to agree to the suggestion.

12. Mr. Malik placed great emphasis on the parenthesised words, “except the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution”, in Section 14(1) of the AFT Act to contend that if this Court were to relegate the petitioner to the Tribunal, it would result in rendering the afore-extracted parenthesised phrase otiose. He also invokes the Heydon’s Rule of interpretation, the principles of purposive interpretation and harmonious construction of statutes and the judgment in *Manish Kumar Giri v. Union of India*⁷, whereby this Bench had referred the issue of whether the Armed Forces Tribunal had jurisdiction to adjudicate on a challenge to the vires of the provision in the Army Act, 1950 to a Larger Bench for consideration.

13. None of the submissions are even tangentially relevant for prayer (a) in this writ petition.

14. To our mind, there is absolutely nothing in the challenge to Sections 14, 21 and 33 of the AFT Act. We reiterate our impression that this challenge has been introduced only so as to forcibly bring the matter within the jurisdiction of this Court.

⁷ 2025 SCC OnLine Del 6230



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15. Section 14(1) of the AFT Act states that the Tribunal would have all jurisdiction, power and authority in respect of service matters exercisable immediately before the appointed date by all Courts except the Supreme Court or High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India. Section 14(2), on the other hand, entitles a person aggrieved by any order pertaining to a service matter to make an application to the AFT. ‘Service matter’ is defined in Section 3(o) thus :

“3. Definitions.— In this Act, unless the context otherwise requires,—

(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) summary disposal and trials where the punishment of dismissal is awarded;
- (iv) any other matter, whatsoever, but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);



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(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months”

16. Clearly, the grievances raised in prayers (b) to (h) in the present writ petition fall within the scope of the expression “service matter” as defined in Section 3(o).

17. This Bench has had an occasion to harmoniously interpret Sections 14 (1) and 14 (2) of the AFT Act, in its decision in ***CDR A Swapna v. Union of India & Ors.***⁸, from which we deem it appropriate to reproduce the following paragraphs:

“9. The following paragraphs from ***L. Chandra Kumar*** make it clear that if a service matter is amenable to adjudication by the AFT, this Court is denuded of jurisdiction in the matter, and will not entertain the petition as a Court of first instance:

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

⁸ 2025 SCC OnLine Del 5204



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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.*”

(Emphasis supplied)

10. Though **L. Chandra Kumar** was rendered in the context of the Central Administrative Tribunal, the exposition of law in that decision clearly extends to all service Tribunals, including the AFT. Indeed, this position is no longer *res integra*, as it stands settled by a Full Bench of this Court in **Squadron Leader Neelam Chahar v UOI & Ors**, from which we deem it appropriate to extract the following paragraphs:

"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.”

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

“The challenge to the Armed Force Human



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Resource Policy No. 03/2013 can be raised before the Armed Forces Tribunal functioning under the Armed Forces Tribunal Act, 2007.”

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

11. A Division Bench of this Court, speaking through one of us, (C. Hari Shankar, J.) has, in **Chandan Kumar v UOI**⁹ relied on **Neelam Chahar** to hold the petition, in that case, not to be maintainable before this Court.

12. Insofar as the amenability of the present dispute to adjudication by the AFT is concerned, Section 14(2) of the AFT Act specifically entitles any person, aggrieved by an order pertaining to any service matter, to make an application to the Tribunal to have the *lis* adjudicated. “Service matters” is defined in Section 3(o) of the AFT Act as meaning all matters relating to the conditions of service of persons subject to the Army Act, Navy Act or the Air Force Act (save those specifically excluded therein) and includes, within it, various categories of matters, of which clause (iv) includes “any other matter whatsoever”.

13. The expression “conditions of service” stands defined by the Supreme Court in **State of M.P v Shardul Singh**¹⁰ to mean all conditions which governed the service of an individual from the time he is recruited into service till the time he superannuates and even thereafter, provided the right that is ventilated is relatable to the period during which the individual was in service. As such, there can be no dispute about the fact that the claim of the petitioner in this writ petition relates to her conditions of service.

14. That being so, the dispute that this writ petition seeks to ventilate is a “service matter” within the meaning of Section 3(o) of the AFT Act and, consequently, also within Section 14 (2) thereof.

15. Though Section 14(1) excludes, from the jurisdiction of the Tribunal, the AFT, the jurisdiction which, prior to the enactment of the AFT Act, could be exercised by the Supreme Court or by High Courts under Articles 226 and 227 of the Constitution of India,

⁹ MANU/DE/1944/2025

¹⁰ (1970) 1 SCC 108



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Section 14(1) starts with the words “save as otherwise expressly provided in this Act”. As such, Section 14(1) has to be read subject to Section 14(2). If the dispute is amenable to adjudication by the AFT under Section 14(2), the AFT would have jurisdiction to adjudicate it.

16. As we have already noted earlier in this order, this is not a case of alternative jurisdiction. The sequitur to the decision in **L. Chandra Kumar** is that this Court is *coram non judice* and cannot act as a court of first instance in respect of service matters which are amenable to adjudication by the AFT or by the CAT.

17. We, therefore, have regrettably to express our inability to entertain this petition as a Court of first instance.”

18. The provisions of Section 14 cannot be treated as, in any way, unconstitutional. They merely require the petitioner, who is aggrieved by a service matter pertaining to the Armed Forces, to approach the AFT in the first instance. We see no illegality in this regard whatsoever. Indeed, the Supreme Court, too, in **L. Chandra Kumar**, emphasized this principle, albeit in the context of the Central Administrative Tribunal.

19. Mr. Malik is clearly incorrect in his assumption that the AFT cannot adjudicate on matters involving fundamental rights. Every service matter, as we have already noted, axiomatically involves Articles 14 and 16 of the Constitution of India. The AFT, which is peopled by competent members and is headed by a respected retired Chief Justice, is eminently capable of adjudicating on such issues.

20. We now address the challenge to Sections 21, 30 and 33 of the AFT Act.



21. Section 21 only requires an applicant, who approaches the Tribunal, to do so after exhausting other remedies available to him. This again is a wholesome provision which is aimed at minimising litigation and ensuring that, at the first instance, the competent departmental authorities are made aware of the applicant grievance before the Court is galvanized.

22. There is a similar provision in the Administrative Tribunals Act, 1985. The requirement of exhausting departmental remedies before approaching a Court is a salutary provision, and is certainly not unconstitutional. Besides, it is also well settled that if there is an emergent situation in which it is not possible, or irreparable harm may ensue if the applicant is required to approach the departmental authorities in the first stance, he can always convince the Tribunal in that regard and the Tribunal is empowered to take such a submission into consideration.

23. Else, it is also well settled that a mandamus, to the Government, can issue only after the petitioner has first approached the Government in that regard, and obtained no relief.

24. Though Mr. Malik did not specifically address us on Sections 30¹¹ and 33¹² of the AFT Act, we find no unconstitutionality in any of

¹¹ 30. **Appeal to Supreme Court.—**

(1) Subject to the provisions of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19): Provided that such appeal is preferred within a period of ninety days of the said decision or order: Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

(2) An appeal shall lie to the Supreme Court as of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt:

Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days



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the provisions. Besides, the position of law with respect to Article 30 sands clarified by the judgment of the Supreme Court in *Parashotam Dass*. Section 30 merely provides that, against a decision of the AFT, an appeal lies to the Supreme Court and Section 33 excludes the jurisdiction of civil courts in respect of service matters once the AFT had come into being.

25. There is, therefore, no substance whatsoever in prayer (a) in the writ petition, which is, accordingly dismissed.

26. We were inclined to allow the petitioner to move the Tribunal in respect of the remaining prayers. However, Mr. Malik has yesterday clearly stated that he is unwilling to do so. We have, therefore, no option but to dismiss this writ petition.

27. The petition is, accordingly, dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MAY 5, 2026/aky/yg

from the date of the order appealed against.

(3) Pending any appeal under sub-section (2), the Supreme Court may order that—

- (a) the execution of the punishment or the order appealed against be suspended; or
- (b) if the appellant is in confinement, he be released on bail:

Provided that where an appellant satisfies the Tribunal that he intends to prefer an appeal, the Tribunal may also exercise any of the powers conferred under clause (a) or clause (b), as the case may be

¹² **33. Exclusion of jurisdiction of civil courts.**—On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters