2026:DHC:3305-DB

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

\+ W.P.(C) 6516/2021

GOLI SRINIVAS RAO IRS .....Petitioner

Through: Mr. Jai Sahai Endlaw and Ms. Shruti Kapur, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ruchir Mishrra, Mr. Sanjiv Kr Saxena, Mr. Mukesh Kr Tiwari, Ms. Reba Jena Mishra and Ms. Poonam Shukla, Advs.

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

<u>JUDGMENT(ORAL)</u>

% **20.04.2026**

<u>C. HARI SHANKAR, J.</u>

1. Aggrieved by the fact that two of his adverse Annual Confidential Reports[1] for the years 2002-03 and 2003-04 had been taken into account by a Departmental Promotion Committee[2] which convened on 23 January 2009 to consider the petitioner's case for promotion to the post of Commissioner of Income Tax, despite the fact that the said ACRs had not been communicated to the petitioner, the petitioner approached the Central Administrative Tribunal[3] by way of OA 2350/2009, which was disposed of by the following order dated 22 October 2009:

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[1] "ACRs" hereinafter
[2] "DPC" hereinafter
[3] "The Tribunal" hereinafter

> "There may not be need to mention facts in detail as it appears to us that the matter be covered by decision of Hon'ble Supreme Court in the case of ***Dev Dutt v. Union of India and others***[4] and the judgment of Full Bench of this Tribunal in OA-24/2007 decided on 7.5.2008 in the matter of ***Ashok Kumar Aneja v. Union of India***.
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> 2. Suffice, it, however, to mention that the applicant has been ignored for promotion to the post of Commissioner of Income Tax as the DPC held on 23.01.2009 did not find him fit for the sole reason that he did not have the requisite bench mark of 'Very Good' in two of his ACRs, i.e. for the year 2003- 2004 and 2005-2006, which were also under consideration with other ACRs by the DPC. Respondents have filed their reply and the averment made in the application that below bench mark in the two ACRs of the applicant was not communicated to the applicant is not in dispute. This is also not in dispute that both the reporting and reviewing authorities have retired. Following the judgment of the Tribunal in OA No. 586/2009 ***Krishna Mohan Dixit v. Union of India*** and others, we direct Director (Establishment), Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training first respondent herein to constitute a review DPC and to reconsider the case of the applicant for promotion to the post of Commissioner of Income Tax by ignoring the two ACRs which were below bench mark and instead taken into consideration two ACRs immediately preceding the said ACRs,. If the previous ACRs may not be available then the DPC will take into consideration the one available immediately before the ACR in question. The same shall be done within a period of two months from the date of receipt of a copy of this order"

2. The Union of India challenged the aforesaid order before this Court by way of WP (C) 4560/2010, which was dismissed in the following terms:

> "1. None for the petitioner.
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> 2. At the first call some proxy counsel appeared and prayed that the matter be passed over to enable learned counsel Shri V.S.R. Krishna to appear and argue the matter. At the second call none appears for the petitioner.

[4] **(2008) 8 SCC 725**

> 3. The issue decided by the Tribunal is squarely covered by two decisions of the Supreme Court reported as ***Devi Dutt v. UOI and Ors***. and SLP (Civil) No. 26556/2004 ***Abhijit Ghosh Dastidar v. UOI and ors***[5].
>
> 4. Suffice would it be to note that the Tribunal has noted that pertaining to two years, ACR grading below the benchmark was not communicated to the first respondent and that it was not in dispute that the Reporting as well as Reviewing Authority have retired.
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> 5. In view of the law laid down in the two aforenoted decisions of the Supreme Court, the legal position is that where an ACR grading below the prescribed benchmark is not communicated to the officer concerned while evaluating the service record of the officer concerned, said ACR grading cannot be considered unless the officer concerned has been put to notice and response received. Further where the Reporting and Reviewing Authorities have retired, it would not be possible for them to consider the response of the officer concerned and in said circumstance the said ACR gradings have to be totally ignored.
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> 6. The writ petition is accordingly dismissed in limine."

3. The grievance of the petitioner is that the review DPC which was convened to consider the petitioner's case for promotion to the post of Commissioner of Income Tax once again took the aforesaid ACRs into consideration, in the teeth of the order dated 13 July 2010 passed by this Court.

4. The petitioner has, in these circumstances, approached this Court means of present writ petition, containing the following prayers:

"**<u>PRAYER</u>**

> It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

[5] **(2009) 16 SCC 146**

(a) Issue appropriate Writ, order or direction to the Respondents to implement the order dated 13.07.2010 passed by this Hon'ble Court in W.P.(C) 4560 of 2010 expeditiously and in any case, within four weeks ;

(b) Issue appropriate Writ, order or direction to the Respondents to restoring the Petitioner's original seniority to Civil Code No. 88502 with the 1988 batch of IRS and that he should be promoted to the rank of Chief Commissioner of Income Tax with all consequential benefits expeditiously and in any case within four weeks;

(c) Issue appropriate Writ, order or direction to the Respondents to stay the recommendations of the DPC dated 23.06.2021 recommending officers for promotion to the rank of Chief Commissioner of Income Tax until the Respondents implement the order dated 13.07.2010 passed by this Hon'ble Court in W.P.(C) 4560 of 2010 and restore the original seniority of the Petitioner along with his batchmates of 1988 batch with all consequential benefits as may be due to the Petitioner;

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

5. Irrespective of the merits of the petitioner's case, it is clear that this petition would not lie before this Court in view of the judgment in ***L. Chandra Kumar v. Union of India***[6], rendered by a Bench of seven Hon'ble Judges of the Supreme Court.

6. ***L. Chandra Kumar*** clearly holds that, in a matter which lies within the jurisdiction of the Central Administrative Tribunal in terms of Section 19 of the Administrative Tribunals Act, 1985, the party has to approach the Tribunal and cannot directly approach this Court. The Supreme Court has expressly proscribed High Courts from acting as courts of first instance in such cases. The relevant paragraphs from

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6 **(1997) 3 SCC 261**

the judgment read thus:

> "93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. *We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that <u>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</u>.*
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> 99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence

to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. *The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts* *even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.*"

(emphasis supplied)

7. The correctness of the decision of the review DPC, which met after the passing of the order of the Tribunal was convened on 27 December 2010, is in question. The grievance of the petitioner is that this DPC also erroneously considered the case of the petitioner.

8. The issue of whether the DPC which met on 27 December 2010 did, or did not, consider the case of the petitioner correctly, has never been examined by the Tribunal. If we were to examine this aspect, it would amount to this Court acting as a court of first instance on this issue, which is expressly proscribed by paras 93 and 99 of ***L. Chandra Kumar.***

9. We, therefore, are of the view that this Court cannot entertain this writ petition as a court of first instance.

10. The remedy available with the petitioner would, therefore, either be to move an original application before the Tribunal and/or, in case the petitioner's stand is that there is wilful and contumacious disobedience by the respondent of the order passed by this Court, to file a contempt petition.

11. At this juncture, Ms. Shruti Kapur, prays that, in view of the position that this Court is taking, the petitioner may be spared the exercise of filing a fresh original application before the Tribunal as pleadings in this writ petition have already been completed and written submissions have also been filed.

12. Even though we are aware that this petition has been pending before this Court since 2021, in view of the judgment in ***L. Chandra Kumar,*** this Court is *coram non judice.*

13. We must emphasize, here, that we are not relegating the petitioner to an *alternate* remedy. The petitioner has, at this stage, *only one remedy*, and that is before the Tribunal.

14. Nonetheless, keeping in view the fact that, for five years, this writ petition has remained pending in this Court, applying the principle *actus curiae neminem gravabit*[7], we, instead of requiring the petitioner to file a fresh OA before the Tribunal, deem it appropriate to direct the Registry of this Court to transmit the record of this writ petition to the Tribunal, which would accordingly register it as a Transferred Application and have it placed before the appropriate Bench after obtaining orders of the Hon'ble Chairperson of the Tribunal.

15. We also direct that the matter be listed before the appropriate

[7] Act of Court should prejudice no one.

Bench of the Tribunal on 5 May 2026.

16. As this matter has been pending before this Court since 2021, we request the Tribunal to expeditiously dispose of this matter, if possible, within a period of six months from the date fixed by us hereunder.

17. We also make it clear that neither side would be entitled to take adjournment from the Tribunal on the date fixed by us.

18. The Tribunal would treat the record of this case, as it exists before this Court, as the record of the Tribunal. No further requirement of exchange of pleadings would, therefore, be necessary.

19. In line with the aforesaid observation, this writ petition is disposed of by transferring it to the Tribunal as above, to be listed before the Tribunal on 5 May 2026.

20. The Tribunal would proceed with the matter as directed by us *supra*. We make it clear that we have not expressed any opinion on the merits of the case.

21. This writ petition is accordingly disposed of in the aforesaid terms.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

APRIL 20, 2026
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