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

% ***Date of decision*: 25.05.2021**

\+ W.P.(C) 5245/2020 and CM No.18891/2020

A.K. SINGH ……Petitioner

Through Mr. A.K. Bhardwaj,
Mr. Karan Gautam and
Ms. Jagriti Singh, Advocates

versus

ARMED FORCES TRIBUNAL & ANR. …..Respondents

Through Mr. Srivats Kaushal,
Mr. Tejaswini, Ms. Priyadeep and
Mr. Humraz Bir Singh, Advocates
for Respondent No.1
Ms. Archana Gaur and
Ms. Ridhima Gaur, Advocates for
Respondent No.2/UOI

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Petitioner has filed the present petition challenging the action of the Respondents in discontinuing the service of the Petitioner w.e.f. 08.07.2020 and a writ of mandamus to the Respondents to reinstate the Petitioner to the post of Section Officer, with all consequential benefits, treating him to be in service from 09.07.2020.

2. Before proceeding to analyze and appreciate the controversy raised in the present petition, it is seemly to exposit the necessitous primary facts as averred in the writ petition. Retired from the Indian Army on

31.03.2011, Petitioner was offered appointment as Assistant in Armed Forces Tribunal, Principal Bench, after successfully clearing the interview conducted by a Committee of the Members of the said Tribunal vide letter dated 14.11.2011. The appointment was on re-employment on contract basis for a period of one year and was governed by Ministry of Defence, I.D. Note No.7(11)/2009-D(AFT) Cell dated 10.07.2009, whereby the Ministry had agreed for appointment of retired Government Servants to fill up unfilled posts in the Armed Forces Tribunal, Principal Bench, after Department of Personnel and Training ('DOPT'), Ministry of Personnel, Public Grievances & Pensions, gave 'no objection' to the said appointments. It was mentioned in the offer letter that service of the Petitioner shall be governed by CCS (CCA) Rules, 1965 and all other Government Orders issued from time to time.

3. Petitioner accepted the offer and joined as Assistant w.e.f. 21.11.2011. He was subsequently appointed as Section Officer on 22.01.2013. It is averred that Recruitment Rules for the various posts in Armed Forces Tribunal were never finalized from its inception in 2008 till 2018 and Respondent No.1 continued to appoint eligible persons on re-employment on contract basis, including the Petitioner, and his contract was renewed year to year. However, vide letter dated 03.02.2020, the Respondent No.1 instead of extending the term by one year, as per past practice, extended the term only for three months and subsequently, vide letters dated 04.05.2020, 29.05.2020 and 24.06.2020, only month to month extension was granted. No extension was, however, granted after 08.07.2020 and services of the Petitioner were discontinued.

4. In the meantime, the Petitioner appeared for an interview on 14.05.2018, for the post of Deputy Registrar, advertised, after Recruitment Rules for various posts in Group 'A' to 'D' were notified through Gazette Notification dated 23.04.2018. Being unsuccessful in the interview, Petitioner was not appointed and he made a representation challenging the process of appointment of Deputy Registrar. Petitioner was also agitated issues of serious anomalies in services conditions of the employees of the Armed Forces Tribunal relating to break in service, pay fixation, etc.

5. Instead of redressing the grievances of the Petitioner, Respondent No.1 issued a Memorandum on 13.09.2019, asking the Petitioner to explain as to why no approval for hiring vehicles for official duty was obtained from the Competent Authority. Petitioner duly responded and filed reply to the Memorandum, but being not satisfied with his response, Respondent No.1 issued Memorandum of Charge on 15.06.2020 under Rule 16 of the CCS (CCS) Rules, 1965. Petitioner filed a reply to the Memorandum of Charge but was ultimately found guilty of all the charges and a minor penalty of 'censure' was imposed on him on 08.07.2020, the last working day up to which the contract had been lastly extended.

6. Petitioner represented to Respondent No.1 on 10.07.2020, seeking extension of his term of engagement, followed by another representation on 12.07.2020 for setting aside the minor penalty, which representations, as per the averments in the writ petition, were stated to be pending when the petition was filed. Penalty of 'censure' is not the subject matter of the present petition and Petitioner has only sought extension of his contract

of employment, but the reference to the same is only with the view to show that bias of Respondent No.1 was the reason for non-renewal of his contract of employment.

7. Learned counsel appearing on behalf of Respondent No.1 at the outset took a preliminary objection to the maintainability of the present petition on the ground that the remedy of the Petitioner lies before the Central Administrative Tribunal (hereinafter referred to as the '**Tribunal**'), in the first instance. It was argued that Petitioner was re-employed on contractual basis in Armed Forces Tribunal, Principal Bench, initially as Assistant and subsequently as a Section Officer. Armed Forces Tribunal (hereinafter referred to as '**AFT**') was constituted by the Central Government under Section 4 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the '**AFT Act**'), with the objective of adjudicating service matters in respect of personnel subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950.

8. Petitioner is holder of a 'civil post' and thus amenable to the jurisdiction of the Tribunal under Section 14(1) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the '**AT Act**') as the dispute is clearly a 'service matter' under Section 3 (q) of the said Act. Section 13(1) of the AFT Act provides that the Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the same. Section 13(2) provides that salaries and allowances payable to, and other terms and conditions of the service of these officers and other employees, shall be such as may be prescribed. Section 41(1)

gives power to the Central Government to make Rules and Section 41(2)(e) provides for Rules in respect of salaries and allowances payable and terms and conditions of such employees under Section 13(2). As Ministry of Defence comes under the Union Government, service matters of its employees, on the civil side, are directly covered under the purview of Section 14(1) of the AT Act and the present dispute falls within the jurisdiction of the Tribunal.

9. It was contended that several factors pertaining to the appointment and service conditions of the Petitioner, are pointers to the fact that he is a holder of 'civil post' amenable to jurisdiction of the Tribunal under Section 14(1) of the AT Act. Elaborating the argument, attention of the Court was drawn to an order dated 14.08.2008, whereby sanction of the President was accorded under Section 13 of the AFT Act for creation of posts for the Principal Bench and other Regional Benches. Attention was further drawn to the I.D. Note by the Ministry of Defence dated 10.07.2009, whereby approval was accorded by the MOD, for appointment on contract basis against the unfilled posts, in consultation with DOPT. It was also submitted that in matters of discipline, Petitioner was subject to the CCS (CCA) Rules, 1965 and all Government Orders from time to time and pay of the Petitioner was fixed in accordance with para 4(b)(i) of CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 as amended from time to time. Recruitment Rules for various Group 'A', 'B', 'C' and 'D' posts in AFT have been notified by the Central Government through a Gazette Notification dated 23.04.2018.

10. It was contended that Section 13 of the AFT Act is *pari materia* to

Section 13 of the AT Act. All service matters concerning the employees of the Tribunal are adjudicated by the Tribunal as the employees thereof are holders of civil post and to substantiate the point, as an illustration, reliance was placed on the judgement of the High Court of Allahabad in Union of India (UOI) & Ors. v. Tribhuvan Nath Kushwaha & Ors., **C.M.W.P. No. 14910/2003**, **decided on 08.04.2004;** judgment of the High Court of Kerala in Union of India & Ors. v. S. Ashok Kumar, **W.P. (C) No. 27830/2005, decided on 26.10.2005** and judgment of this Court in Kapil Kumar Setia & Ors. vs. Union of India & Ors., **W.P. (C) No. 3717/2016**, **decided on 03.05.2016**. To strengthen the argument, learned counsel placed reliance on the judgments of the Tribunal in Sanjeev Kumar Kaushik & Ors. v. Union of India & Ors., **O.A. No. 3900/2013, decided on 27.08.2019** and in Sheo Kumar v. Union of India & Ors., **O.A. No. 1768/2016**, **decided on 17.03.2020**

11. Learned counsel also referred to the judgment of the Supreme Court in Samarendra Das, Advocate v. State of West Bengal & Ors. **(2004) 2 SCC 274,** wherein the Supreme Court held that the post of Assistant Public Prosecutor under Rules 3 and 4 of the West Bengal Assistant Public Prosecutors (Qualification, Method of Recruitment and Conditions of Service) Rules, 1974, is a 'civil post' and therefore all service matters concerning the post, shall fall within the jurisdiction, powers and authority of State Administrative Tribunals under Section 15 of the AT Act.

12. It was next contended that the Petitioner being a holder of 'civil post' and amenable to the jurisdiction of the Tribunal under Section 14(1) of AT Act, is precluded from directly filing a petition in this Court

in view of the judgment of the Constitution Bench of the Supreme Court in L. Chandra Kumar v. Union of India & Ors. **(1997) 3 SCC 261.** The Supreme Court has clearly held in the said judgment that in respect of service matters, for employees amenable to the jurisdiction of the Tribunals, petitions cannot be filed directly in the High Court, overlooking the jurisdiction of the Tribunal, which alone is a Court of first instance. Therefore, approaching the Tribunal is not an alternative but the only remedy for the Petitioner and the argument that the remedy is not efficacious, is not available to the Petitioner.

13. *Per contra*, learned counsel for the Petitioner strenuously opposed the preliminary objection raised by the Respondent on manifold grounds. Mr. A.K. Bhardwaj articulated that it cannot be disputed that Article 323A of the Constitution of India provides for establishment of Administrative Tribunals separately for the Union and the State and in terms of provisions of sub-Clause (d) of Clause (2) of the said Article, Parliament could exclude the jurisdiction of all Courts, except jurisdiction of the Supreme Court under Article 136, with respect to disputes referred to in Clause (1). However, the powers so conferred on the Tribunals, run counter to the powers conferred upon the High Courts under Article 226 of the Constitution of India and there can be no bar in approaching the High Court.

14. It was argued that this precise issue came up for consideration before the Supreme Court in L. Chandra Kumar (supra). In the said case in fact a broader issue was raised, whether the Tribunals could be effective substitutes for the High Court in discharging the power of judicial review. Referring to the observations of the Constitution Bench

of the Supreme Court in Keshavananda Bharti v. State of Kerala **(1973) 4 SCC 225**, the Supreme Court observed that though the subordinate judiciary or Tribunals created under ordinary Legislation cannot exercise power of judicial review of legislative action to the exclusion of the Supreme Court and the High Courts, there is no Constitutional prohibition against their performing a supplemental, as opposed to a substitutional role in this respect. The Supreme Court finally held that the jurisdiction conferred upon it under Article 32 of the Constitution and upon the High Courts under Articles 226 / 227 of the Constitution is a part of the inviolable basic structure of the Constitution and cannot be ousted. Learned counsel, relying on the said observations, submitted that while the Tribunals continue to function as Courts of first instance *qua* subjects covered within their jurisdiction, but it is explicit that citizens can always approach the High Courts for enforcement of their legal and fundamental rights.

15. Learned counsel relied on the judgment in Rojer Mathew v. South Indian Bank Ltd. **(2020) 6 SCC 1,** wherein the Supreme Court, noted its earlier judgment in Union of India v. R. Gandhi, President, Madras Bar Association **(2010) 11 SCC 1**, wherein it was observed that if Tribunals were established as substitutes of Courts, they must possess independence, security and it would be imperative to include members of judiciary as Presiding Officers / Members of the Tribunal. Pithily put, the argument was that firstly, jurisdiction of the High Court can never be questioned and secondly, plea of alternative remedy can only be raised by the Respondents, if the remedy is independent and effective.

16. Questioning the effectiveness and independence of the Tribunal as

an alternative remedy, learned counsel submitted that under Section 9 of the AT Act, it is provided that the Chairman or any other Member shall not be removed from his office except by an order by the President on the ground of proved misbehavior or incapacity, after an inquiry made by a Judge of the Supreme Court. However, after the coming into force of the Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2020 (hereinafter referred to as '**Tribunal Rules, 2020**'), a provision has been made in Rule 8(2) for preliminary scrutiny into the truth of complaint of misbehavior or incapacity of the Chairman or Member of the Tribunal by the Central Government. Under the Government of India (Allocation of Business) Rules, 1961, the Ministry of Personnel, Public Grievances and Pension is the nodal Ministry to take decisions regarding the service conditions of the employees, who approach the Tribunal for redressal of their grievances and thus mostly it is the action of this Ministry which is examined and tested by the Tribunal. Succinctly stated, after coming into force of the aforementioned Rules of 2020, the Tribunal is no longer independent and effective in deciding the matters before it, as the Ministry whose decision is to be tested has the power to scrutinize the behaviour and incapacity of the Chairman and Members of the Tribunal.

17. It was further contended that it is a settled proposition of law that the mere existence of alternative Forum or remedy cannot be a bar on the High Court to exercise its writ jurisdiction and this can at best be a factor to be taken into consideration by the High Court, amongst other factors and in this context, reliance was placed on the judgment of the

Supreme Court in Maharashtra Chess Association v. Union of India & Ors. **(2020) 13 SCC 285**. For the same proposition, reliance was placed on the judgment of this Court in Savita Kapila, Legal Heir of Late Shri Mohinder Paul Kapila vs. Assistant Commissioner of Income Tax, Circle 43(1) Delhi, **W.P. (C) No. 3258/2020**, **decided on 16.07.2020**. Learned counsel also relied on the judgment of the Supreme Court in Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. **(1998) 8 SCC 1** wherein the Supreme Court held that where a writ petition is filed for enforcement of fundamental rights or where there is violation of principles of natural justice or the impugned proceedings are wholly without jurisdiction, writ petition will not be barred on the ground of existence of an alternative statutory remedy. The principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not law, as observed by the Supreme Court in a recent judgment in Balakrishna Ram v. Union of India & Anr. **(2020) 2 SCC 442.**

18. It was further contended that reading of Section 14(1) of AT Act clearly shows that the Tribunal has jurisdiction in relation to recruitment and matters concerning All India Service or any civil service of the Union or civil post under the Union or a post connected with Defence or in the Defence services, being in either case a post filled by a civilian. In State of Karnataka & Ors. v. Ameerbi & Ors. **(2007) 11 SCC 681**, the Supreme Court held that when appointments are made under a Scheme or pursuant to a Recruitment process carried out through Committees, the appointees thereof, are not holders of civil post. In Union of India & Anr. v. Chotelal & Ors. **(1999) 1 SCC 554**, the Supreme Court held that

employees paid out of regimental funds, which are not public funds, cannot be holders of civil posts, under the Ministry of Defence so as to come under the jurisdiction of the Tribunals.

19. It was argued that while the Full Bench of the Tribunal in Rehmat Ullah Khan & Ors. v. Union of India & Ors**.** **(1989) 10 ATC 656** way back in the year 1989, had taken a view that casual workers could approach the Tribunal, however, this cannot be an authority to oust the Petitioner from the High Court, who being a contract employee has rightly invoked the jurisdiction of this Court. In any case, the Tribunal is not a substitute of a High Court and cannot issue directions in the nature of writ of quo warranto or prohibition like the High Court, exercising power under Article 226 of the Constitution.

20. Last but not the least, learned counsel contended that the Tribunal can have jurisdiction only *qua* those who are working in connection with the affairs of the Union i.e. executive affairs under Article 77 of the Constitution. Section 2 of the AT Act specifically bars the jurisdiction of the Tribunal *qua* employees working in connection with affairs of the judiciary and legislature. AFT is a judicial Body created pursuant to the observations of the Supreme Court in Lt. Col. Prithi Pal Singh Bedi v. Union of India **(1982) 3 SCC 140,** wherein the Supreme Court had expressed concern over the lack of remedy of an appeal against the verdicts of Court Martials in the Armed Forces.

21. I have heard learned counsels for the parties and examined their respective contentions.

22. It may be noted that when the petition was taken up for admission, at the outset, Respondents had raised an objection to the maintainability

on the ground that the Petitioner is amenable to the jurisdiction of the Tribunal. On account of this objection, arguments were addressed limited to the maintainability of the petition and judgment was reserved.

23. From the arguments canvassed by both sides, the following issues arise for consideration before this Court :

(a) Whether the Petition is holder of a 'civil post' and thus amenable to the jurisdiction of the Tribunal under Section 14(1) of the AT Act?

(b) Whether the present writ petition can be entertained by this Court under Article 226 of the Constitution of India, bypassing the remedy available before the Tribunal, if the answer to the first question is in the affirmative?

24. In order to answer the first question, Court would be required to examine what a 'civil post' is. In the case of State of Assam v. Kanak Chandra Dutta, **AIR 1967 SC 884**, the Supreme Court delineated the parameters of the term 'civil post' as under :-

> *"9. The question is whether a Mauzadar is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to of Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a*

State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

25. In this context, I may usefully refer to another judgment of the Supreme Court in State of Gujarat v. Raman Lal Keshav Lal Soni & Anr. **(1983) 2 SCC 33** wherein the issue before the Supreme Court was whether the members of Gujarat Panchayat Service are Government servants. The Court held that no single factor can be considered as a definitive test to determine when a person may be said to hold a civil post and presence of all or some of the factors such as right to appoint, terminate, prescribe conditions of service, right to control the manner and method of work, the source of salary, etc. may be considered to determine the status. Relevant passage is as under :-

"27. We have to first consider the question whether the members of the Gujarat Panchayat Service are government servants. Earlier we have already said enough to indicate our view that they are government servants. We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may

indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not…..''

26. Having closely read the aforesaid judgments, the inevitable conclusion is that the term 'civil post' has not been formally or statutorily defined. Broadly understood, it is a post not connected with the Defence, a post on the civil, as distinguished from the Defence side of administration i.e. an employment in civil capacity under the Union or the State. As observed by the Supreme Court, a person holding a post under the State or the Union is a person serving or employed under the State / Union and there is a master-servant relationship between the Union / State and the holder of the post. The right of the Union / State to select, appoint, control the service conditions, fix salary and allowances, exercise disciplinary powers are factors which go a long way in determining the status of an employee as a holder of civil post.

27. In light of the above, the question that begs an answer is, whether the Petitioner is a holder of 'civil post'. Examined on the anvil of the principles elucidated in the aforesaid judgments, the question can only

be answered in favour of the Respondents and against the Petitioner, for the reason stated hereinafter.

28. Section 13(1) of the AFT Act provides that Central Government shall determine the nature and categories of the officers and employees required to assist the Tribunal in discharge of its functions and provide the Tribunal with such officers and other employees. The Armed Forces Tribunal Bill, 2005 received the assent of the President on 20.12.2007 and came on the Statute Book as the Armed Forces Tribunal Act, 2007. Vide order dated 14.08.2008, sanction of the President was accorded for creation of posts for the Principal Bench at Delhi and various Regional Benches of AFT. The order is explicit and relevant part reads as under :-

"No.4(3)/2008-D(AFT Cell)
Government of India
Ministry of Defence

New Delhi, 14th August, 2008

ORDER

Subject: Creation of the posts of officers and support staff of the Armed Forces Tribunal.

Sanction of the President is hereby accorded under Section 13 of the Armed Forces Act, 2007 (No. 55 of 2007), for creation of the posts as per Annexures I and II, respectively, for the Principal Bench at New Delhi and Regional Branches at Chandigarh; Lucknow; Kolkata; Guwahati: Mumbai; Kochi; Chennai & Jaipur of the Armed Forces Tribunal.

2. The expenditure incurred shall be debitable to Major Head 2014 Administration of Justice 00800 Other Expenditure

(Minor Head) 14 Armed Forces Tribunal, 01 Establishment, 01.01 Salaries under Grant No. 19 Ministry of Defence (Civil) for the Year 2008-09.

3. This issue with the concurrence of Ministry of Defence (Finance) vide their ID Note No. 456-AG/PA dated 14.08.2008.

Sd/-
(Suman K Sharma)
Under Secretary to the Government of India"

29. Para 2 of the order clearly reflects that the expenditure for creation of the posts was debitable to major and minor heads mentioned therein and the salaries were to be paid from Grant No.19, Ministry of Defence (Civil) for the years 2008-2009. The order further shows that it was issued with the concurrence of Ministry of Defence (Finance) vide their ID Note dated 14.08.2008. The proposal relating to filling up the unfilled posts was considered and agreed to by the Ministry of Defence, in consultation with DOPT, vide I.D. Note dated 10.07.2009, which was a precursor to the selection of the Petitioner against the post of Assistant in the year 2011.

30. The offer letter of appointment of the Petitioner, in para 2(i) under the head 'terms and conditions of appointment' stipulated that the appointment was governed by Ministry of Defence I.D. Note dated 10.07.2009. Learned counsel for Respondent No.1 during the course of arguments had highlighted that the Central Government had notified the Armed Forces Tribunal (Financial and Administrative Power) Rules, 2008 in exercise of power conferred by Section 41 read with Section 12

of the AFT Act. Rule 4 of the said Rules is as under :-

> *"The Chairperson shall have the same power as are conferred on a Department of the Central Government in respect of the Delegation of Financial Power Rules, 1978……..the CCS (Conduct) Rules, 1964 and CCS(CCA) Rules, 1965."*

31. From a bare perusal of the provisions of the Rules, it is evident that the exercise of financial powers by the Chairman, AFT are subject to Government Instructions and in respect of matters not within the competence of the Chairperson, concurrence of Ministry of Finance or any other Authority is obtained by the Chairperson, through the Ministry of Defence.

32. Method of recruitment to the post of Section Officer, with which the present petition concerns, is laid down in the Armed Forces Tribunal (Group-B Gazetted and Non-Gazetted Posts) Recruitment Rules, 2018. *Albeit* when the Petitioner was appointed, the Recruitment Rules had not been notified, however, if the relief sought by the Petitioner is to be granted, the Recruitment Rules will govern his re-engagement and continuance. The Recruitment Rules have been made by the Central Government in exercise of powers conferred by Section 13(2) read with Section 41(2)(e) of the AFT Act and are notified in the Official Gazette on 23.04.2018. Rule 5 thereof, gives the power to the Central Government to relax any of the provision of the Rule, if it is of the opinion that it is necessary or expedient to do so.

33. Leaned counsel for Respondent No.1 had pointed out that the Recruitment Rules for the various posts in AFT have been notified, as referred above. This Court while researching has come across a recent

Circular issued by Ministry of Defence, Government of India, inviting applications for filling up various posts in AFT Principal Bench and Regional Benches, which includes post of Section Officer. It is clear from a reading of the above that the post of Section Officer is a 'General Central Services Group 'B' Gazetted Non-Ministerial' post. Relevant part of the Circular is as under:-

"GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

Phone :26105124
Fax No : 26105361

West Block - VIII
Sector – I, R.K. Puram
New Delhi - 110066

F. No.2(92)/2019/AFT/PB/Adm-II

Dated: 19th October, 2020

CIRCULAR

Applications are invited for filling up the posts of ***Financial Adviser and Chief Accounts Officer, Registrar, Joint Registrar, Dy. Registrar, Principal Private Secretary, Private Secretary, Section Officer/Tribunal Officer, Assistant, Tribunal Master/Steno Grade-'I', Junior Accounts Officer,*** *and* ***Upper Division Clerk*** *in the* ***Armed Forces Tribunal, Principal Bench, New Delhi and Regional Benches at Chandigarh, Chennai, Guwahati, Jabalpur, Jaipur, Kolkata, Kochi, Lucknow, Mumbai and Jammu*** *on deputation basis for a period of three years from suitable candidates, who fulfill the eligibility conditions:-*

S. No.	***Name of the Post***	***No. of Post***	***Pay scale (Rs.)***	***Eligibility conditions***
01	***Financial Adviser and Chief Accounts Officer***	*Principal Bench-01*	*Pay Matrix Level-13*	*Officers of organized accounts cadre of the Central Government* *(i) Holding analogous posts on regular basis* *or*

				(ii) With five years regular service in the level – 12 in the pay matrix (Rs.78800-209200) *Note-1: The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or other organization or Department of the Central Govt. shall not ordinarily exceed five years.*
02	***Registrar*** *(General Central Service Group 'A' Gazetted, Non-Ministerial)*	*Chennai Bench -01* *Guwahati Bench – 01* *Kolkata Bench–01* *Lucknow Bench – 01* *Mumbai Bench –01* *Total = 05*	*Pay Matrix Level -13*	*Officer of Central Government of State Government or Supreme Court or High Courts or District Courts or Statutory/ Autonomous of bodies having pensionary benefits or Judge Advocate General Branch of Army, Navy & Air Force and other similar institutions* *(a) (i) holding analogous post on regular basis in the parent cadre or Department;* *Or* *(ii) five years' regular service in the parent cadre or Department in Level-12 of the Pay Matrix: and*

				(b) holding degree in law from a recognized University. *Note: The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organization or department of the Central Government shall not ordinarily exceed four years.*

XXXXX

09	***Section Officer/ Tribunal Officer*** *(General Central Services Group 'B' Gazetted Non-ministerial)*	*Principal bench – 04* *Chandi-garh Bench – 02* *Guwahati Bench – 03* *Jaipur Bench – 02* *Kolkata Bench – 02* *Mumbai Bench – 01* *Jammu Bench – 01* ***Total =15***	*Pay Matrix Level -7*	*Persons working under Central Government or State Governments or Supreme Court or High Courts or Subordinate Courts or Statutory/ Autonomous bodies having pensionary benefits:* *(a)(i) holding analogous post on regular basis in the parent cadre or Department; or* *(ii) a post in Level – 6 of the Pay Matrix with five year' regular service in the grade, and* *(b) possessing the following education qualifications and experience:* *(i) Degree of a recognized university;*

				and *(ii) Having 2 years experience in personnel administrative or judicial work.* *Desirable: Degree of Law.* *Note: The period of deputation including the period of deputation (including short term contract) in another ex-cadre post held immediately preceding the appointment in the same or some other Organization or department of the Central Government shall not ordinarily exceed three years.*
10	***Assistant*** *(General Central Services Group 'B' Gazetted Non-ministerial)*	*Principal Bench – 01* *Chennai Bench – 01* *Guwahati Bench – 01* *Jaipur Bench – 02* *Lucknow Bench – 03* *Mumbai Bench – 01* ***Total =09***	*Pay Matrix Level -6*	*Officials working under Central Government or State Governments or Supreme Court or High Courts or Subordinate Courts or Statutory/ Autonomous bodies having pensionary benefits:* *(a)(i) holding analogous post on regular basis in the parent cadre or Department; or* *(ii) Upper Division Clerk in Level – 4 of the Pay Matrix with 10 years regular service in the grade in Central Government or State*

				Governments or Supreme Courts or High Courts or Subordinate Courts. *(b) (i) possessing degree from recognized University; and* *(ii) having 2 years' experience in establishment, administration or accounts.* *Note: The period of deputation including the period of deputation (including short term contract) in another ex-cadre post held immediately preceding the appointment in the same or some other Organization or department of the Central Government shall not ordinarily exceed three years.*

34. Classification of Civil Posts is only to be found under Rule 6 of the CCS (CCA) Rules, 1965. Rule 6 is as follows:-

> ***"6. Classification of Posts***
>
> *Civil Posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall, by a general or special order of the President, be classified as follows:-*
>
> *(i) Central Civil Posts, Group 'A';*
> *(ii) Central Civil Posts, Group 'B';*
> *(iii) Central Civil Posts, Group 'C';*
> *(iv) Central Civil Posts, Group 'D'."*

35. Rule 7 of the said Rules defines "General Central Service", and is as follows:-

> ***"7. General Central Service***
>
> *Central Civil posts of any group not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding group and a Government servant appointed to any such post shall be deemed to be a member of that Service unless he is already a member of any other Central Civil Service of the same group."*

36. Conjoint reading of the aforesaid Circular and the Rules aforesaid clearly shows that the post of Section officer is a Civil Post. Additionally, it is apparent from the documents placed on record by the parties that the Rules of the Central Government and Instructions thereunder governed the service conditions of the Petitioner. In matters of discipline, Petitioner was governed by the CCS (CCA) Rules, 1965 and this was so prescribed even in the offer letter of appointment. Para 2(viii) of the letter dated 14.11.2011 is as under :-

> *"(viii) In matter of discipline you will be subject to CCS (CCA) Rules and all Government orders issued from time to time."*

37. Letter dated 27.01.2014 shows that the pay fixation of the Petitioner was in accordance with para 4 (b)(i) of CCS (Fixation of Pay of Re-employed Pensioners) Order, 1986, as amended from time to time. In fact the note dated 02.03.2020 placed on record by the Petitioner indicates that the recommendations of the Committee, constituted by the Chairperson of AFT to look into the grievances of the Petitioner, was forwarded to Ministry of Defence for consideration and approval. When

all the above factors are considered singularly and cumulatively, it is clear that Petitioner is a holder of 'civil post'. Ministry of Defence comes under the 'Union' as prescribed under Section 14(1) of AT Act. There is no dispute that the subject matter of the present petition falls under 'service matters' as defined in Section 3(q) of the AT Act. Therefore, Petitioner is amenable to the jurisdiction of the Tribunal as a Court of first instance.

38. The next issue that arises is whether the present petition can be entertained, when the remedy available to the Petitioner lies before the Tribunal under Section 14(1) of the Act. Counsel for the Petitioner strenuously argued that the power of judicial review of a High Court is a part of the basic structure of the Constitution and as held by the Supreme Court in L. Chandra Kumar (supra), cannot be ousted, being integral to the Constitutional scheme and thus this Court has jurisdiction even if an alternative remedy exists.

39. To examine the said contention, I may first refer to the judgement by the Constitutional Bench of the Supreme Court in L. Chandra Kumar (supra). The questions of law that were framed by the Supreme Court for consideration are as under:

> *"(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article*

323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?"

40. The Supreme Court thereafter set out the legal and historical background to the case and referred to Articles 323-A and 323-B in Part XIV-A of the Constitution, inserted through Section 46 of the Constitution (42nd Amendment) Act, 1976 with effect from 01.03.1977. Article 323-A with which the present petition concerns provides for constitution of the Administrative Tribunals with respect to recruitment and conditions of service of persons appointed to Public Services and posts in connection with the affairs of the Union etc. and is as under:

"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.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1);"

41. Thereafter the Supreme Court noted the Statement of Objects and Reasons of the AT Act as follows:

"7. In pursuance of the power conferred upon it by clause (1) of Article 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985 (Act 13 of 1985) (hereinafter referred to as "the Act"). The Statement of Objects and Reasons of the Act indicates that it was in the express terms of Article 323-A of the Constitution and was being enacted because a large number of cases relating to service matters were pending before various courts; it was expected that "the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons

covered by the Administrative Tribunals speedy relief in respect of their grievances".

42. In para 9 the Supreme Court referred to the judgement of the five-Judge Constitution Bench in S.P. Sampath Kumar v. Union of India (**1985) 4 SCC 458**, wherein the Supreme Court had, in a challenge to the Constitutional validity of Article 323-A, taken a view that though judicial review is a basic feature of the Constitution, the vesting of the said power in an alternative Institutional mechanism would not do violence to the basic structure, so long as it is ensured that the mechanism is effective and will be an effective and a real substitute for the High Court. Relevant para is as follows:

"9. When Sampath Kumar case was finally heard, these changes had already been incorporated in the body and text of the Act. The Court took the view that most of the original grounds of challenge — which included a challenge to the constitutional validity of Article 323-A — did not survive and restricted its focus to testing only the constitutional validity of the provisions of the Act. In its final decision, the Court held that though judicial review is a basic feature of the Constitution, the vesting of the power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court. Using this theory of effective alternative institutional mechanisms as its foundation, the Court proceeded to analyse the provisions of the Act in order to ascertain whether they passed constitutional muster. The Court came to the conclusion that the Act, as it stood at that time, did not measure up to the requirements of an effective substitute

and, to that end, suggested several amendments to the provisions governing the form and content of the Tribunal. The suggested amendments were given the force of law by an Amending Act (Act 51 of 1987) after the conclusion of the case and the Act has since remained unaltered."

43. The Supreme Court after examining the provisions of the Act applied itself to analyzing one of the decisions impugned before it rendered by the Full Bench of the Andhra Pradesh High Court in Sakinala Hari Nath v. State of A.P., **1993 SCC OnLine AP 195**, wherein Article 323-A (2)(d) was held to be unconstitutional to the extent it empowers the Parliament to exclude the jurisdiction of the High Courts under Article 226 of the Constitution. The Andhra Pradesh High Court held that under the Constitutional scheme, Supreme Court and High Courts are the sole repositories of the power of judicial review. Such a power, including the power to pronounce on the validity of Statutes, actions taken by individuals and State has only been entrusted to the Constitutional Courts. The High Court analyzing the decision in Sampath Kumar (supra) observed that the theory of Alternative Institutional Mechanism was in defiance of the proposition laid down in Kesavananda Bharati v. State of Kerala (supra) that Constitutional Courts alone are competent to exercise power of judicial review to pronounce upon Constitutional validity, statutory provisions and Rules. In this background, the High Court of Andhra Pradesh held that service matters involving constitutionality of Rules or provisions should not be left to be decided by statutorily created adjudicatory bodies.

44. The Supreme Court while examining the said observations, observed as follows:

> *"51. The underlying theme of the impugned judgment of the A.P. High Court rendered by M.N. Rao, J. is that the power of judicial review is one of the basic features of our Constitution and that aspect of the power which enables courts to test the constitutional validity of statutory provisions is vested exclusively in the constitutional courts, i.e., the High Courts and the Supreme Court. In this regard, the position in American Constitutional law in respect of courts created under Article III of the Constitution of the United States has been analysed to state that the functions of Article III Courts (constitutional courts) cannot be performed by other legislative courts established by the Congress in exercise of its legislative power. The following decisions of the US Supreme Court have been cited for support: National Mutual Insurance Co. of the Distt. of Columbia v. Tidewater Transfer Co. [93 L Ed 1556 : 337 US 582 (1948)] , Thomas S. Williams v. United States [77 L Ed 1372 : 289 US 553 (1932)] , Cooper v. Aaron [3 L Ed 2d 5 : 358 US 1 (1958)] , Northern Pipeline Construction Co. v. Marathon Pipeline Co. and United States [73 L Ed 2d 598 : 458 US 50 (1982)] .*
>
> *xxx xxx xxx*
>
> *54. ...However, what must be emphasised is the fact that Article III itself contemplates the conferment of such judicial power by the US Congress upon inferior courts so long as the independence of the Judges is ensured in terms of Section 1 of Article III. The proposition which emerges from this analysis is that in the United States, though the concept of judicial power has been accorded great*

constitutional protection, there is no blanket prohibition on the conferment of judicial power upon courts other than the US Supreme Court."

45. The Supreme Court thereafter addressed itself to the question as to what constitutes the basic structure of the Constitution, in order to express its opinion on the issue whether the power of judicial review vested in the High Courts and in the Supreme Court under Articles 226/227 and 32 respectively, is a part of the basic structure of the Constitution of India. Relying on the observations of the Supreme Court in Kesavananda Bharati (supra), wherein the doctrine of basic structure was evolved and on the case of Indira Nehru Gandhi v. Raj Narain, **(1975) Supp SCC 1** the Supreme Court observed as follows:

"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 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."

46. Having so held, what followed as an observation of the Supreme Court is significant and crucial to the present case. The Supreme Court thereafter held that though the subordinate Judiciary or the Tribunals created under ordinary Legislations, cannot exercise the power of judicial review of Legislative action to the exclusion of the Supreme Court and High Courts, there is no Constitutional prohibition against their performing a supplemental, as opposed to substitutional role in this respect. That such a situation is contemplated within the Constitutional scheme becomes evident by reading Clause (3) of Article 32 of the Constitution. The Court further went on to hold that 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 jurisdiction conferred upon the High Court. Importantly it was held that so long as the jurisdiction of the High Court under Article 226/227 is retained, there is no reason why the power to test the validity of Legislations cannot be conferred upon Administrative Tribunals,

created under the Act or those under Article 323-B of the Constitution. Relevant paras are as under:

> *"80. However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental — as opposed to a substitutional — role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution which reads as under:*
>
> *"32. Remedies for enforcement of rights conferred by this Part.—*
>
> *(1) ****
>
> *(2) ****
>
> *(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)****."*
>
> *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."

(emphasis supplied)

47. The Supreme Court then referred to the reasons, which according to the Court, were pressing reasons to preserve the conferment of powers on the Tribunals and these are discernible from paras 82 to 84 of the judgement, which are extracted herein under, for ready reference:

"82. There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the Framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other constitutional safeguards were created to assist them in effectively discharging this onerous burden. The expectation was that this power would be required to be used only occasionally. However, in the five decades that have ensued since Independence, the quantity of litigation before the High Courts has exploded in an unprecedented manner. The decision in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] was rendered against such a backdrop. We are conscious of the fact that when a Constitution Bench

of this Court in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time. Nearly a decade later, we are now in a position to review the theoretical and practical results that have arisen as a consequence of the adoption of such an approach.

83. We must, at this stage, focus upon the factual position which occasioned the adoption of the theory of alternative institutional mechanisms in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] . In his leading judgment, Ranganath Misra, J. refers to the fact that since Independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts. Reference was made to studies conducted towards relieving the High Courts of their increased load. In this regard, the recommendations of the Shah Committee for setting up independent Tribunals as also the suggestion of the Administrative Reforms Commission that Civil Service Tribunals be set up, were noted. Reference was also made to the decision in Kamal Kanti Dutta v. Union of India [(1980) 4 SCC 38 : 1980 SCC (L&S) 485] where this Court had, while emphasising the need for speedy resolution of service disputes, proposed the establishment of Service Tribunals.

84. The problem of clearing the backlogs of High Courts, which has reached colossal proportions in our times is, nevertheless, one that has been the focus of study for close to half a century. Over time, several Expert Committees and Commissions have analysed the intricacies involved and have made suggestions, not all of which have been

consistent. Of the several studies that have been conducted in this regard, as many as twelve have been undertaken by the Law Commission of India (hereinafter referred to as "the LCI") or similar high-level committees appointed by the Central Government, and are particularly noteworthy. [Report of the High Court Arrears Committee 1949; LCI, 14th Report on Reform of Judicial Administration (1958); LCI, 27th Report on Code of Civil Procedure, 1908 (1964); LCI, 41st Report on Code of Criminal Procedure, 1898 (1969); LCI, 54th Report of Code of Civil Procedure, 1908 (1973); LCI, 57th Report on Structure and Jurisdiction of the Higher Judiciary (1974); Report of High Court Arrears Committee, 1972; LCI, 79th Report on Delay and Arrears in High Courts and other Appellate Courts (1979); LCI, 99th Report on Oral Arguments and Written Arguments in the Higher Courts (1984); Satish Chandra Committee Report 1986; LCI, 124th Report on the High Court Arrears — A Fresh Look (1988); Report of the Arrears Committee (1989-90).]"

48. Having reflected on the powers of judicial review of the High Court under Articles 226/227 of the Constitution as well as the need to have Administrative Tribunals for adjudication of service matters as an alternative mechanism, the Supreme Court further went on to elaborate what I may state directly concerns and touches upon the issue of maintainability of this petition in the context of overlooking the remedy of approaching the Tribunal. Suffice would it be in this context to quote paras 90 to 94 of the judgement, which are as follows :

"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review,

the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. 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, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the

manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , after taking note of these facts, it was suggested 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 the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforestated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the 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.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, 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.

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 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.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered."

49. The Supreme Court finally held 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, are unconstitutional. In para 99, the Court reaffirmed that the said jurisdiction is a part of the inviolable basic structure of the 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 Article 32 of the Constitution. It is significant to note that the Supreme Court, in no uncertain terms held that the Tribunals will nevertheless continue to act as Courts of first instance and more importantly, it will not be open to the litigants to directly approach the High Courts, overlooking the jurisdiction of the Tribunal concerned. Para 99 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."

50. The principles that can be broadly culled out from a reading of these passages are :

> *(a) Powers 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.*
>
> *(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.*

51. Having perused the above judgement of the Constitutional Bench, the inexplorable and inevitable conclusion that can be drawn is that where the person is covered under the provisions of Section 14 of the AT Act, Tribunal is the Court of first instance, with respect to service matters. The Supreme Court clearly ruled that power of the High Court

is a part of the inviolable basic structure of the Constitution, but having so observed, the Supreme Court has qualified it by observing that for the areas for which the Tribunals are created, High Court cannot be approached directly and Division Bench of the High Court would exercise power of judicial review over the decisions of the jurisdictional Tribunal.

52. Contention of the Petitioner that the jurisdiction of the High Court under Article 226 is a part of inviolable basic structure and framework of our Constitution is a proposition which cannot be disputed. However, in view of the binding dictum of the Constitution Bench of the Supreme Court in L. Chandra Kumar (supra) in the context of remedy before the Central Administrative Tribunal, the present writ petition cannot be entertained. The presumption on which the arguments of the Petitioner are premised is that approaching the Tribunal is an alternative remedy and therefore if the remedy is not efficacious, a writ can be filed.This argument cannot be sustained in view of the observations of the Supreme Court in L. Chandra Kumar (supra) that the remedy to approach the Tribunal in service disputes with respect to employees who are amenable to its jurisdiction is not an alternative remedy but is the only remedy, the Tribunal being a Court of first instance. Employees aggrieved by the decision of the Tribunal can certainly approach the respective High Court having territorial jurisdiction over the matter in its power of judicial review over the decisions of the Tribunal. It is fundamental that if the remedy before the Tribunal is not alternative, the arguments of the remedy being efficacious cannot be accepted.

53. Very recently, a Co-ordinate Bench of this Court in Rajesh Goyal v. Defence Research and Development Organisation & Ors.**, 2021 SCC OnLine Del 964**, was called upon to adjudicate on a controversy related to treating special pay in lieu of separate pay-scale as a part of basic pay in respect of the Petitioner who had retired as Scientist-G from DRDO under the Government of India. The Court relying on the judgment of the Supreme Court in L. Chandra Kumar (supra) and agreeing with the view taken by this Court in Akshay Kumar and Ors. v. Union of India and Ors., **WP(C) 8316/2020, decided on 24.11.2020** declined to entertain the writ petition filed directly in this Court, bypassing the remedy before the Tribunal.

54. Insofar as the Petitioner has sought to question the independence of the Tribunals in the light of the Tribunal Rules, 2020, suffice would it be to state that the argument is based on mere assumptions and conjectures of the Petitioner. Respondents have rightly pointed out that the Supreme Court in the case of Madras Bar Association v. Union of India & Anr., **2020 SCC OnLine SC 962** has directed that recommendations of Search-cum-Selection Committee in matters of disciplinary action shall be final and the same shall be implemented by the Central Government, which in any event dispels whatever apprehension the Petitioner may have.

55. Reliance of the Petitioner on the judgment of the Supreme Court in Maharashtra Chess Association (supra) can be of no avail. In the said case, the issue before the Supreme Court was whether by private agreement between the parties, it was open to confer exclusive jurisdiction on a particular High Court to the exclusion of the other High

Court, where cause of action otherwise arises. It is in this context that the Supreme Court held that the decision by the High Court, to entertain or not to entertain a petition in its writ jurisdiction is fundamentally discretionary and the limitations placed on the Court's discretion are self-imposed. The Supreme Court also observed that mere existence of alternative Forums, where the aggrieved party may secure relief, does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration amongst several factors. Relevant para of the judgment is as follows :-

> *"22. The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors. Thus, the mere fact that the High Court at Madras is capable of granting adequate relief to the Appellant does not create a legal bar on the Bombay High Court exercising its writ jurisdiction in the present matter."*

56. It may bear repetition that the remedy before the Tribunal is not an alternative remedy and the Tribunal is the Court of first instance for service matters and in view of the judgment in L. Chandra Kumar (supra), the aforesaid judgment will not apply to the present case. For the same reason, the judgments in Savita Kapila (supra) and Balakrishna Ram (supra) wherein the Supreme Court had held that existence of alternative efficacious remedy will not be a bar for the High Court to exercise its writ jurisdiction, would be inapplicable.

57. Mr. A.K. Bhardwaj, learned counsel for the Petitioner has very eloquently articulated yet another argument that the Tribunal has jurisdiction *qua* the employees who are working in connection with the

affairs of the Union under Article 77 of the Constitution of India and additionally that Section 2 of the AT Act bars the jurisdiction of the Tribunal *qua* the employees working in Courts subordinate to the Supreme Court or High Courts. Relevant part of Section 2 of the AT Act is as under :-

> "*2.* ***Act not to apply to certain persons****. – The provisions of this Act shall not apply to –*
> *xxx xxx xxx*
> *(c) any officer or servant of the Supreme Court or of any High Court [or courts subordinate thereto];"*

58. That the post of Section Officer in AFT is a civil post, has been answered in the earlier part of the judgement and comes under the purview of Section 14(1) of AT Act. In this view of the matter, the argument with respect to Article 77 of Constitution of India, is misconceived. The exclusion of applicability of AT Act is provided under Section 2(c) and a plain reading of the provision indicates that the AT Act shall not apply to an officer or servant of the Supreme Court or of any High Court or Courts subordinate thereto. The Petitioner was admittedly appointed as an Assistant initially with the AFT and subsequently as a Section Officer. He is thus not an officer or servant of the Supreme Court or the High Court. Insofar as the expression 'Courts subordinate thereto' is concerned, owing to Article 227(4) of the Constitution of India, the powers of superintendence vested in this Court under Article 227 do not extend to the Armed Forces Tribunal and the AFT is not a Court subordinate to the High Court. Therefore, the contention that the Petitioner being an employee of AFT, is outside the

purview of the AT Act is misplaced.

59. The submission of learned counsel for the Petitioner that the Supreme Court in Lt. Col. Prithi Pal Singh Bedi (supra) had held that absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in matters of Court Martial was a distressing and glaring lacuna, cannot be disputed. Indeed the Supreme Court had urged the Government to take steps to provide atleast one independent and truly judicial review Forum for Defence personnel with the right to seek judicial review in service matters or file appeals against the verdicts of Court Martials, comprising a body composed of non-military personnel or civil personnel. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20.08.1992 recommended constitution of an independent Statutory Board or Tribunal in that behalf. Thereafter, the Armed Forces Tribunal Bill received the assent of the President on 20.12.2007 and the AFT Act came on the Statute Book, having force w.e.f. 15.06.2008. The AFT Act provides for redressal of service disputes before the AFT by personnel subject to the Army / Navy / Air Force Acts and also appeal against the verdict of Court Martial. This, however, cannot lead to a conclusion that employees of AFT are not amenable to the jurisdiction of the Tribunal as is sought to be contended by the Petitioner.

60. The contention of the Petitioner that being employed on re-employment on contract basis, he is not amenable to the jurisdiction of the Tribunal, only merits rejection. This issue is no longer res integra and it would be apposite in this regard to quote a few passages from the

judgment of a Full Bench of this Court in Suman Lata v. Govt. of NCT Delhi & Ors., **2015 SCC Online 7927.** In the said case, Suman Lata had applied against an advertisement inviting applications to appoint honorary Anganwadi Helpers. She had originally predicated her claim before the Tribunal but the Original Application was rejected in view of the law declared by the Supreme Court in Ameerbi and Ors. (supra) holding that Anganwadi workers were not holders of a civil post. Suman Lata then filed a writ petition in this Court, which was listed before the learned Single Judge, who made a reference to the Larger Bench in view of the judgment in L. Chandra Kumar (supra) and Ameerbi and Ors. (supra) and the reference was as under :-

> *"(i) Whether any and every employment of a person with the Union of India in terms of Section 3(q) of the Act, including of the such persons as Anganwadi workers/helpers, will or will not be covered for being decided by the Tribunal as per Section 14 of the Administrative Tribunal Act, 1985, and whether this question is to be answered by holding that the issues of service conditions of Anganwadi workers/helpers in the employment of the Govt. of NCT of Delhi will have to be decided by the Tribunal in view of the judgment of the Division Bench of three judges in the case Deep Chand Pandey (supra), and that it is not to be decided by the Tribunal though so held by the Division Bench of two judges in the case of Ameerbi (supra)."*

61. Analyzing Section 14(1) and Section 3(q) of the AT Act as also considering the judgments in Ameerbi and Ors. (supra) and Union of India and Ors. v. Deep Chand Pandey and Ors. **(1992) 4 SCC 432** as well as State of Assam v. Kanak Chandra Dutta (supra), the Full Bench held that the real test to determine would be to see the nature of duties

performed and also the nature of reliefs prayed for, overlooking whether the appointment is temporary or casual and what is important is that the employment must relate to matters connected with the affairs of the State. In that context, the Full Bench had distinguished the judgment of the Supreme Court in Union of India and Anr. v. Chhote Lal & ors. (supra), which is also relied upon by the Petitioner before this Court. Relevant passages from the judgment of the Full Bench are as under :-

> *"8. To answer the reference, and which would subsume whether there is any conflict in the law declared in Ameerbi's case and Deep Chand Pandey's case, as has been prima-facie opined to exist by the learned Single Judge, we need to note that as held by the Constitution Bench of the Supreme Court in the decision reported as AIR 1967 SC 884 State of Assam v. Kanak Chandra Dutta, answering the question whether a 'Mauzadar' appointed by the State of Assam vested with the responsibility of collecting revenue of a Mouza, was or was not the holder of a civil post under the State of Assam and hence was entitled or not to the constitutional protection of Article 311(2) of the Constitution of India; the dismissal admittedly being without complying with the provisions of Article 311(2) of the Constitution of India, in paras 9 and 10 of the opinion, the Supreme Court opined as under:-*
>
> > *"9. The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post*

connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 301 to 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are

attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post."

9. Pithily put, the judgment guides that a post is an office or a position under the State to which duties in connection with the affairs of the State are attached. A post may be created before the appointment or simultaneously with it. Most fundamentally to be noted in the decision is the legal proposition that whereas a post is an employment, but every employment would not be a post, and that a post under the State or the Union means a post under the administrative control of the State.

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13. In other words, the decision in Deep Chand Pandey's case, which we note has not dealt with the issue of what is a civil service and what would be a civil post, and hence has not made a reference to the Constitution Bench decision in Kanak Chandra Dutta's case (supra), would be an authority on the point that a claim made against the Union of India, if successful, results in the claimant

acquiring a status (concerning the employment) for a work which relates to the affairs of the State, the claim would have to be made before the Administrative Tribunal constituted under the Central Administrative Tribunal Act, 1985.

14. A perusal of paragraph 9 to 11 of the decision of the Constitution Bench in Kanak Chandra Dutta's case would also reveal that the same principle has been held to be determinative by the Constitution Bench i.e. whether the employment results in a status. It is trite that the origin of every employment is contractual, but may acquire a status if the Constitution or a law made in exercise of the constitutional power affords a protection to the employment.

15. The Constitution Bench decision of the Supreme Court in the decision reported as (1983) 2 SCC 33 State of Gujarat v. Raman Lal Keshav Lal Soni, dealing with the Gujarat Panchayats Act, 1961 and recruitment made in the Taluka, Gram, District, Nayaya, Conciliation Panchayats; on the question whether the employees were Government servants, in para 27 observed as under:-

> *"27. We have to first consider the question whether the members of the Gujarat Panchayat Service are Government Servants. Earlier we have already, said enough to indicate our view that they are Government Servants. We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the*

right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not. Amongst the cases cited before us were AIR 1964 SC 254 Gurugobinda Basu v. Sankari Prasad Ghosal, AIR 1965 SC 360, State of U.P. v. Audh Narain Singh, AIR 1967 SC 884, State of Assam v. Kanak Chandra Dutta, (1969) 1 SCC 466 D.R. Gurushantappa v. Abdul Khuddus Anwar, (1970) 1 SCC 177 S.L. Agarwal v. G.M. Hindustan Steel Ltd., and Civil Appeals Nos. 24 and 25 of 1968, decided on December 20, 1968 Jalgaon Zilla Parishad v. Duman Gobind. We have considered all of them and do not consider it necessary to refer to each of the cases."

16. The decision of the Supreme Court reported as (1999) 1 SCC 554 UOI v. Chotelal held that dhobis (washerman) appointed to wash clothes of cadets at the National Defence Academy at Khadakwasla and who were paid wages from a fund called 'Regimental Fund' cannot be said to be holders of a civil post merely because the 'Regimental Fund' receives a grant-in-aid which can be traced to the Consolidated Fund of India. The Supreme Court noted the Defence Services Regulations where 'Public Fund' was

defined. The decision held that merely because the source of the salary payable or an allowance payable from a fund is traceable to the Consolidated Fund of India, would not mean that the person concerned holds a civil post.

17. Though not expressly stated in Chotelal's case, the principle of law declared by the Constitution Bench in Kanak Chandra Dutta's case was applied: that the employment must relate to matters connected with the affairs of the State. It is trite that work or job of washing clothes for which payment was made from 'Regimental Funds' does not relate to the affairs of the State.

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20. It thus boils down that the real test is to see the nature of the duties performed by the employee as also the nature of the relief prayed for; overlooking whether the appointment is temporary or casual. It is trite that a post may be permanent or temporary. If the employment involves a work and requires duties to be performed in connection with the affairs of the State, and where the employment is regulated by a law, which could be even an office instruction or a guideline; and at the heart of the matter is a right predicated under the law which would, if the relief is granted, result in a status being conferred, it would be a service matter.

21. This is the reason why, a three bench decision of the Supreme Court reported as (2009) 13 SCC 311 R.R. Pillai v. Commanding Officer, HQ Southern Air Command while overruling a two judge bench decision reported as (2001) 1 SCC 720 UOI v. M. Aslam, held that employees of Unit run canteens of the armed forces cannot be said to be discharging functions concerning the affairs of

the State and thus a dispute concerning their service would not be a service dispute attracting the jurisdiction of the administrative tribunal. The contra view taken in M. Aslam's case was overruled, which gave primacy to the source of the fund. This view taken in R.R. Pillai's case was affirmed by the Supreme Court in the decision reported as (2012) 13 SCC 565 UOI v. Gobinda Prasad Mula.

22. We answer the reference by holding that the decision of the two Judge Bench in Ameerbi's case and the decision of the three Judge Bench of the Supreme Court in Deep Chand Pandey's case are thus reconcilable, if one looks at the facts of each case a little carefully. There is no conflict between the two. Whereas Deep Chand Pandey and others were discharging duties concerning the affairs of the State, Ameerbi and others were not discharging duties concerning the affairs of the State. It is immaterial whether in both cases the initial appointment was ad-hoc or casual. The issue of the jurisdiction of the Administrative Tribunal to entertain a claim by a person, requiring a consideration whether the dispute pertains to a service matter in connection with the affairs of the Union has to be decided on the principles of law declared by the two Constitution Bench decisions in Kanak Chandra Dutta's case and Ram Lal Keshav Lal Soni's case.

62. In the case of Yogesh Mahajan vs. Professor R.C. Deka, Director, All India Institute of Medical Sciences, **(2018) 3 SCC 218**, the Petitioner was engaged as a contractual employee in AIIMS. Aggrieved by the non-renewal of the contract, he approached the Tribunal, where his application was entertained, but relief of renewal of contract/ regularization was declined on merits. The judgment was upheld by the

Division Bench of this Court and finally approved by the Supreme Court. Therefore, it is not correct for the Petitioner to contend that being a contract employee, the Petitioner is precluded from approaching the Tribunal. In fact counsel for Respondent No.1 rightly relied on several judgements, where service matters of the employees of the Tribunal are adjudicated by the Tribunal and have been alluded to in earlier part of the judgement and are not being repeated in order to avoid prolixity. Respondent No.1 is right in his submission that Section 13 of AFT Act and AT Act are *pari materia.*

63. For all the aforesaid reasons and the binding dictum and authoritative pronouncement of the Constitution Bench of the Supreme Court in L. Chandra Kumar (supra), the present petition cannot be entertained.

64. The writ petition alongwith accompanying application is hereby dismissed as not maintainable, granting liberty to the Petitioner to approach the Central Administrative Tribunal, in accordance with law, if so advised.

65. It is made clear that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J

MAY 25, 2021/yg