

(2025) 09 DEL CK 0708

In the Delhi High Court

Case No : Writ Petition (C) No. 9535 Of 2017 & Civil Miscellaneous Application
No. 38755 Of 2017

Manish Kumar Giri Alias Sabi Giri

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-09-2025

Acts Referred:

Constitution of India, 1950 — Article 32, 226, 227, 323A, 323B
Navy Act, 1957 — Section 9
Armed Forces Tribunal Act, 2007 — Section 5(2), 14, 30, 31
Administrative Tribunal Act, 1985 — Section 14, 14(1)

Citation : (2025) 09 DEL CK 0708

Hon'ble Judges : C. Hari Shankar, J;Om Prakash Shukla, J

Bench : Division Bench

Advocate : Trideep Pais, Amritananda Chakravorty, Mihir Samson, Shreya Munoth, Sitamsini Cherukumalli, Saloni Ambastha, Sakshi Jain, Pradip Kumar Singh, Chetan Sharma, Piyush Beriwal, Ruchita Srivastava, Amit Gupta, Vidur Dwivedi, Naman, Commander Akarshan

Judgement

Om Prakash Shukla, J

1. The present petition has been filed seeking omnibus relief(s), which includes quashing and setting aside of the order dated 04.10.2017, whereby the petitioner has been discharged from his services from the Indian Navy. Further, consequential relief of reinstatement with full back wages and quashing of the decision of his placement in a low medical category, production of service record, direction to frame policy for recruitment, enrolment & conditions of service of transgender, compensation etc. has also been sought in the present petition.

2. However, the first relief sought by the petitioner is in the nature of a challenge to the constitutional validity of Section 9 of the Navy Act, 1957 "Navy Act", and Regulations 261, 268, 269, 278, and 279 of Navy Regulation (Part III) and similar other regulations of like nature. These reliefs have been sought to declare them as void and unconstitutional to the extent they do not recognise the

identity of transgender persons. The maintainability of this first relief before this Court, as sought by the petitioner in the present writ petition, is the focal point of this judgment.

3. Succinctly, the facts of the present case would reveal that the petitioner was enrolled as a sailor in the Indian Navy at Senior Secondary Recruit "SSR", (SSR) whose services have been administratively terminated as 'Services No Longer Required' "SNLR" under Regulation 279 of Regulations Navy Part-III (statutory) On 06.10.2017.

4. Apparently, during his employment with the Indian Navy, the petitioner contends that he slowly started identifying as female and wanted to appear and express himself in his female gender identity. The petitioner informed the Naval authorities in February 2015, that he was suffering from gender dysphoria, and needed medical intervention, however, it is alleged that the respondent failed to pay any heed to his concern and subjected him to psychiatric counselling. Left with no option, the petitioner underwent Sex Re-Assignment Surgery in a private hospital in Delhi in October 2016.

5. It has been further stated that the Respondent Nos. 3, 4 and 5 found out about the surgery and as such they confined the petitioner to a psychiatric ward for five months without any basis, whatsoever, and subjected him to innumerable medical assessments. Subsequently, when the petitioner re-joined work in April 2017, he was served with a show cause notice for SNLR under Regulation 279(b), Navy Regulations-Part III on 19.03.2017, to which he duly replied. However, on 06.10.2017, the Respondent Nos. 1 and 2 communicated the order of discharge against the petitioner from the Indian Navy for SNLR, on the basis that "the existing service rules and regulations do not permit the sailor's continued employment owing to his altered gender status, medical condition and resultant employability restrictions."

6. Per contra, the learned Counsel for respondent(s) states that petitioner was mainly discharged from service for "misconduct" i.e., being absent without leave 8 times from enrolment. Details of the petitioner's misconduct has been distinctively mentioned in their counter-affidavit, which is being extracted herein below:

Ser

Period of Absence

Unit

Incident and Remarks

a)

11-18 March 2011

INS Airavat

Absent without leave during SSR Training.

b)

31 March-11 April 2011

c)

17-18 May 2011

INS Shivaji

Absent without leave during DME training.

d)

16 September-25

November 2012

INS Ganga

Marked 'R' on 16 September 2012 for being without leave.

e)

05-08 August 2013

INS Trata

Absent without leave.

f)

11 December 2013-01

January 2014

Marked 'R' on 11 December 2013 for being absent without leave and awarded Detention Quarters (DQ) for 60 days.

g)

07-17 June 2014

INS Eksila

The petitioner was absent without leave from 07 to 17 June

2014 and awarded

punishment No. 6 (Mulcts of pay and allowances for 10 days) and No. 12 (Stoppage of leave for 30 days). The petitioner was given SNLR warning iaw Article 279 (b) of Regs Navy Part III (Statutory) on 06

August 2014.

h)

03-09 November 2014

The petitioner was awarded punishment No. 6 for 50 days and
No. 12 for 50 days for the offence of absence

j)

29 December 2014-27

January 2015

without leave. The petitioner was also issued SNLR warning once again on 18 March 2015.

It is the case of the respondent(s) that despite repeated counselling and warnings, including issuance of Show Cause Notices and adequate opportunities to reform, the petitioner continued his indiscipline behaviour.

7. It has been further submitted that, although the petitioner had been warned of Regulation 279 of the Regulations Navy Part III and also had been afforded opportunity to improve, however, the petitioner continued to be an undisciplined sailor, wherein, he was found to be lying to his divisional officer, found with long hairs, nail polish and trimmed eyebrows and refused to follow service-like appearance and had also undergone gender re-assignment surgery in a civil hospital without informing naval authorities, thereby making himself fall in the low medical category and unfit to be employed at sea and it was for these reasons, inter alia, the petitioner was discharged for his misconduct as SNLR.

8. The maintainability of this present writ petition has been raised as a preliminary objection by the respondents. According to them, Armed Forces Tribunal "AFT" was a Court of first instance and the petitioner had an alternative and efficacious remedy available before the AFT and as such ought to have approached the AFT for the reliefs as sought in the present writ petition. It has been contended that the petitioner has challenged the vires of Section 9 of the Navy Act, 1957 to make the present writ petition maintainable before this Court instead of AFT. Further, they contend that vires can be challenged before the AFT but even if the said provision is selectively declared ultra vires by this Court, the discharge of the petitioner would still hold good, as the petitioner had been discharged from his service in the Indian Navy due to various incidences of misconduct. It has been contended that, in any case the AFT is competent to adjudicate the vires of the Navy Act and as such has prayed for dismissal of the present petition.

9. Since a preliminary objection has been raised by the respondents, this Court vide an order dated 07.08.2023 had directed both the parties to file their respective short written submissions limited to the aspect of jurisdiction and/or maintainability of this writ petition. The parties having filed their written submissions, the present matter was heard on several dates on the issue of maintainability. Since, the issue of maintainability goes to the root of the

controversy between the parties, this Court deems it fit to decide the said aspect of jurisdiction as a preliminary issue.

10. It has been submitted by the learned Counsel for the petitioner that the issue of jurisdiction is contrary to the stand already taken by the respondent in *Hav. Sham Dass v Union of India & Ors* Review Petition No. 32/2018 in W.P (Civil) No. 10830 of 2018 ; wherein the respondent had taken a stand that the AFT does not have the power to decide the vires of any law or policy. It has further been submitted that the ratio of *L. Chandrakumar v Union of India* (1997 3 SCC 261) only refers to Tribunals created under Article 323A and 323B. According to him, the power of Tribunals to test the vires of legislation is restricted to the Tribunals created under above mentioned Articles and does not extend to Tribunals created under the specific statutes. He has chosen to highlight the marked distinction between the power of jurisdiction vested under Section 14 of the AFT Act, 2007 'AFT Act' and Section 14 of the Administrative Tribunal Act, 1985 and has sought to draw a finer distinction by the conspicuous absence of the phrase "High court exercising jurisdiction under Article 226 and 227 of the constitution" from Section 14 of the Administrative Tribunal juxtaposed to Section 14 of the AFT Act.

11. The petitioner submitted that Tribunals created under statutes cannot travel beyond its ambit to exercise jurisdiction in light of the judgment of the Supreme Court in *Cellular Operators Association of India v Union of India* (2003) 3 SCC 186, Para 37. The learned Counsel has also relied on the judgment of *Bal Krishna Ram v Union of India* (2020) 2 SCC 442 to contend that although this Court's writ jurisdiction has been specifically excluded in Section 14(1) of the AFT Act in service matters, however, it cannot be said that this Court is barred from entertaining the present writ petition on the principle of efficacious alternative remedy, which is a rule of discretion and not a rule of jurisdiction. The attention of this Court was brought to the provisions of Sections 30 and 31 of the AFT Act to submit that since a direct appeal is only maintainable before the Hon'ble Supreme Court against any order of the AFT, the power of this Court of judicial review as recognised by the Constitutional Bench in *L. Chandra Kumar* (supra) would become redundant and relies on the judgment of *Union of India v Major General Shri Kant Sharma* (2015) 6 SCC 773.

12. It was further submitted that the present case was not a case of service simpliciter and the Parliament never intended to confer the AFT with the powers as exercised by the High Court under Articles 226 and 227 of the Constitution of India, i.e., the power to entertain constitutional challenges to the validity of legislations. According to him, the only interpretation behind the exclusion of Articles 226 and 227 therein pertains specifically to the power of judicial review i.e., the power to strike down legislation, remains exclusively vested in the High Courts.

13. The learned Counsel for the petitioner has tried to distinguish the ratio in *Squadron Leader Neelam Chahar v Union of India and others* W.P (C) 9139/2019 with the present case in hand and has submitted that the ratio in

that case is not applicable to the present case, since Neelam Chahar (supra) dealt with the issue of AFT being competent to entertain challenges to the validity of a policy and not a statutory provision, as is sought to be done in the present case. The learned Counsel has relied on the judgment of this Court in the case of Babita Puniya v the Secretary and Anr. 2010 SCC Online Del 1116, Annie Nagaraja v. Union of India (2020) 13 SCC 1 and Kush Kalra v. Union of India 2018 SCC OnLine Del 6439 to contend that this court has entertained Armed Forces petition, which raised constitutional issues or substantial question of law.

14. On the other hand, the learned ASG for the respondent submitted that power under Article 226 of the Constitution of India to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well. Although, he sought to explain the expansive amplitude of the power vested with this Court, however, it was also submitted that this Court, in adequate circumstances, may also not entertain a writ petition under Article 226. He further submits that one of the restrictions on the power of High Court is where an effective alternate remedy is available to the aggrieved person and when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, then, according to him, first resort must be that statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India and further in case where there are disputed questions of fact, the High Court may decline to hear a writ petition on ground of jurisdiction. The learned Counsel in that regard, has relied on the judgment of Hon'ble Apex Court in Seth Chand Ratan v Pandit Durga Prasad (2003) 5 SCC 399, Babubhai Muljibhai Patel v Nand Lal Khodidas Barot (1974) 2 SCC 706 and Rajasthan SEB v Union of India (2008) 5 SCC 632.

15. Respondent also placed reliance on the Full Bench judgment of this Court of Neelam Chahar (supra), wherein this Court had held that the AFT is competent to hear the challenge to the vires of subordinate legislations, rules, regulations, notifications, circulars, etc. as and when challenged by the affected parties.

16. The learned Counsel for the respondent submits that although the petitioner has challenged the vires of Section 9 of the Navy Act, however, the said challenge has no relation with the discharge of the petitioner from service. He further submits that vires of the said provision has been camouflaged along with other reliefs, only to invoke the jurisdiction of this Court and assuming that even if the said provision is declared void and unconstitutional to the extent that it does not recognize the identity of a transgender person, the same would not provide any solace to the petitioner, since the petitioner has already been enrolled under Section 9 of the Navy Act and has subsequently been administratively discharged under Regulation 278 of Regulations Navy Part-III (Statutory) for his "misconducts".

17. Learned Counsel for the respondent submits that the present case involves many disputed questions of facts including petitioner's allegation of wrongful detention, ill-treatment, etc. Therefore, such petition may not be entertained by

this Court and as such may be remanded to the AFT for its adjudication along with the vires of the Navy Act, for which it had adequate jurisdiction.

18. Having heard the learned Counsel for the parties, this Court finds that the issue as to whether a question involving vires of a statute is to be dealt by this Court or the learned AFT concerned was extensively dealt by the Apex Court in the celebrated judgment of L. Chandra Kumar (*supra*), wherein a Constitutional Bench of the Hon'ble Supreme Court laid guidelines/procedure for adjudication of questions involving vires of statutory provision(s). The Hon'ble Supreme Court had proscribed litigants from approaching Hon'ble High Court(s) in cases involving interpretation of statutes along with questions involving vires of statutory provisions with a rider that the Tribunal concerned shall not entertain any questions regarding the vires of its parent statute ("AFT Act" in the present case). The judgment held as follows:

99. Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in Dr. Mahabal Ram's case, we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.

100. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, 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 323A and 323B 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 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 323A and Article 323B 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 concerned Tribunal 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 concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

(Emphasis supplied)

19. Thus, in *L. Chandra Kumar* (supra), the Hon'ble Supreme Court, after discussing the bench combination and, in a way, adjudging the competency of a Bench of the learned Tribunal to adjudicate serious issues of vires and/or constitutionality of a provision, held that it shall not be open to litigants to directly approach the High Court even in cases where they question the vires of statutory legislation by overlooking the jurisdiction of the concerned Tribunal.

20. Applying the same rationale in the present case, it is necessary to consider the position in relation to the learned AFT.

21. Apparently, in AFT there is no concept of single member Bench. Further, in view of Section 5(2) of the AFT Act, a Bench would constitute of an Administrative Member and a Judicial Member. The Judicial Member ought to be a retired Judge of a High Court. Further, Section 6 of the AFT Act stipulates that the Chairperson of the Tribunal shall either be a retired Supreme Court Judge or a retired Chief Justice of a High Court. Thus, as far as the Bench combination and competency is concerned, the AFT is also equally equipped, to decide on the issue of challenge to vires especially in view of the experience of the judicial background of its members, in contrast to the learned Central Administrative Tribunal.

22. Now we must consider, the legislative intent and purpose of the AFT Act. We find that the said Act was enacted with the objective of allowing the learned Tribunal to adjudicate cases involving commissions, appointments, enrolment, and conditions of service of personnel of the Armed Forces covered under the Army Act of 1950, the Navy Act, and the Air Force Act of 1950. The objective was also to allow to hear appeals of orders, decisions, or sentences of Courts-Martial held under the aforementioned Acts, as well as matters related or incidental to them. The jurisdiction appears to be all-inclusive and exclusive.

23. Further, as far as the difference in applicability and scope of Section 14(1) of the Administrative Tribunals Act, 1985 and that of Section 14(1) of the AFT Act is concerned, vis-a-vis the competency of the learned Tribunals to adjudicate a challenge to the vires of their respective parent Act(s) itself, it would be profitable, at this stage, to quote Section 14(1) of the AFT Act which inter-alia states:

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

xxxxxxx xxxxxx xxxxx xxxxx"

24. From a bare reading of the abovementioned provision, this Court finds that the use of the words "jurisdiction" and "service matters" by the word "all", provides an all-inclusive power to the learned AFT to adjudicate all matters relating to service of Armed Forces personnel. As far as the submission of the learned counsel for the petitioner that the judgment of L. Chandra Kumar (supra) is not applicable to AFT as having been passed in a case relating to the Administrative Tribunal Act, 1985 is concerned, it would be beneficial to note that initially Sections 30 and 31 of the AFT Act provided for an appeal directly to the Hon'ble Supreme Court, while the power of the Hon'ble High Court to entertain any challenge to the orders of AFT, even under judicial review were altogether curtailed in light of the judgment of the Supreme Court in Union of India v Major General Shri Kant Sharma (2015) 6 SCC 773, however, a Full Bench of the Apex Court in Union of India v Parashotam Dass 2023 SCC OnLine SC 314, wherein, after referring to L. Chandra Kumar (supra) held that the decision in Major General Shri Kant Sharma (supra) does not lay down the correct law and was in conflict with multiple decisions of the Supreme Court. The Hon'ble Court made it abundantly clear that there was no per se restriction on the exercise of powers under Article 226 of the Constitution of India by the High Court(s). Further, the Supreme Court in Parashotam Dass (supra), while adjudicating on the powers of the AFT, referred to the decision in L. Chandra Kumar (supra) and held that the decision of the Constitutional Bench clearly put the matter to rest by upholding the principles of 'Tribunalisation' under Articles 323A and Article 323-B of the Constitution of India. The Court therein was of the view that the decision of Tribunals would be subjected to the jurisdiction of the High Courts under Article 226 of the Constitution of India. The Hon'ble Supreme Court thus, reiterated and clarified that the power of the High Court under Article 226 of the Constitution of India was not inhibited, and that superintendence and control under Article 227 of the Constitution of India were somewhat distinct from the powers of judicial review.

25. However, the learned Counsel for the petitioner contended that L. Chandra Kumar (supra) would not be applicable to a Tribunal constituted under the AFT Act and the same was essentially on the aspect of Tribunals constituted under Article 323A or 323B of the Constitution of India and according to him, a mere reference to the decision in Parashotam Dass (supra) would not clothe the AFT with the jurisdiction to decide the vires of the Act, which essentially lies with the constitutional courts i.e., the High Court(s) and the Hon'ble Supreme Court.

26. We deem it appropriate to highlight paragraph 93 of L. Chandra Kumar (supra), wherein the Constitutional Bench summarised the jurisdictional powers of the Tribunals in the following words:

"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 decision 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 views 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 so 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."

27. In our considered view, the Hon'ble Supreme Court, while summarising the jurisdictional aspect of the learned Tribunal in the aforesaid judgment, concluded that the Tribunals were competent to hear matters where the vires of statutory provisions were involved and in discharging the said duty, such Tribunals did not act as substitutes for the High Courts or the Supreme Court, rather, their function in this respect, was only supplementary as all such decisions of the Tribunals would be subject to scrutiny before a Division Bench of the respective High Courts.

28. However, in the same breath, this Court also notes that the Administrative Tribunals are constituted under Article 323A of the Constitution of India. In contrast, the AFT cannot be said to be a Tribunal constituted under Article 323A of the Constitution of India. The service disputes of the Armed Forces do not fall within the subjects enumerated in Article 323B either. Further, the AFT has been constituted by an Act of the Parliament i.e., the AFT Act of 2007, whereas the Administrative Tribunals, derive their power from the Constitution of India.

29. Further, the aforesaid interpretation gains prominence in the wake of Section 14(1) of the AFT Act wherein the legislature, in its wisdom, provided that the AFT

shall exercise "all the jurisdiction, power and authority", exercisable by all courts in relation to all service matters, except the power to be exercised by the Hon'ble Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India. According to the learned Counsel for the petitioner, the incorporation of the words; "except the Supreme Court or a High Court exercising jurisdiction under Article 226 or 227 of the Constitution" in Section 14(1) has to be understood in such a way that the AFT has all the powers in relation to service matters, except the powers which are essentially vested in the Constitutional Courts. Thus, it is his submission that the High Courts or the Hon'ble Supreme Court, having been bestowed with the extraordinary power to adjudicate upon the constitutional validity of a provision, are the competent authorities to adjudicate the vires of the Army Act, 1950, or the Navy Act or the Air Force Act, 1950.

30. This Court finds that similar submissions were also addressed in *L. Chandra Kumar* (supra), wherein it was contended that the Tribunals should not be allowed to adjudicate upon matters wherein vires of legislations are questioned, or constitutional issues are involved. The Hon'ble Supreme Court in categorical terms, negated the said submission and held at paragraph 90 of the said judgment, which makes for a beneficial quote; herein under:

"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"

(Emphasis supplied)

31. The situation becomes complex because a Full Bench of this Court, in *Neelam Chahar* (supra), after considering the abovementioned judgment, returned a finding to the effect that the AFT is competent to hear the challenge to the vires of statutory provisions. The Full Bench of this Court referred to the judgment of *L. Chandra Kumar* (supra) to arrive at a decision, which we note, remains unchallenged to this day. It would be profitable to quote the relevant paragraphs of the Full Bench, being reproduced as under:

"9. Section 14 of the AFT Act, 2007 is para material to Section 14 of the Administrative Tribunals Act, 1985, which governs the jurisdiction, powers and authority of the Central Administrative Tribunals.....

10. In '*L. Chandra Kumar v. Union of India*' (supra) in paragraph 93, the following was held:

"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 decision 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 views 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 so 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.

11. It is the admitted position that in the present case, the legislation under which the Armed Forces Tribunal has been created, is not under challenge. What is under challenge is the 'Air Force Human Resource Policy No. 03/2013' which deals with grant of substantive promotions upto the rank of Wing Commander and Group Captain (TS). The aim of the policy has been described as under:

"2. The aim of this HRP is to lay down QRs and guidelines for grant of Substantive promotions up to the rank of Wg Cdr and GpCapt (TS). The provisions contained in this policy are applicable to all Permanent Commissioned officers, Short Service Commissioned officers, Branch Commissioned officers and Service Entry Commission officers of all the Branches, other than Medical and Dental Branches."

11.1 The policy further defines the detailed procedure for grant of substantive promotions to the stage of super-annuation and the Approving Authorities for grant, deferment, denial of substantive ranks to the Air Force officials covered by this Policy.

12. In our considered view, challenge to the 'Air Headquarter Human Resource Policy No. 03/2013' dated 28.08.2013, squarely falls within the term of 'vires of statutory provisions' as held in L.

Chandra Kumar v. Union of India' (supra). Hence, the Armed Forces Tribunal is competent to entertain the present petition and the batch of petitions which have laid challenge to various circulars, statutory rules, regulations, policies and other similar communications issued by the respondent Government and its organs from time to time."

(Emphasis supplied)

32. A reading of the aforesaid judgment brings out the fact that the Full Bench was merely examining the competency of the AFT to adjudicate the vires of the subordinate legislations, rules, regulations, notifications, and circulars etc., and not Central Acts like the Army Act, Navy Act or the Air Force Act. However, the underscored words in paragraph 12 of the above excerpt reveal that the Full Bench has also expressed the view that the AFT can adjudicate on the vires of statutory provisions. In fact, the Full Bench has upheld the jurisdiction of the AFT to adjudicate on the legality of the Air Headquarter Human Resource Policy because it falls within the term "vires of statutory provision", as employed in L. Chandra Kumar (supra).

33. Since Neelam Chahar (supra) has been rendered by a Full Bench of three Hon'ble Judges of this Court, we deem it appropriate, in the interests of judicial discipline, to refer these issues to the Hon'ble Full Bench for decision.

34. An incidental aspect of concern is whether, if the AFT is to be held to be competent to adjudicate on the vires of parliamentary legislations, would this principle extend to all Tribunals, even though they are not constituted under Article 323A or Article 323B of the Constitution of India.

35. Keeping in view the issue raised in the present petition relating to the competency of the AFT to adjudicate a challenge to the constitutional validity of a provision under the Navy Act, being of considerable public importance, we deem it appropriate to refer the following questions for adjudication by a Full Bench to be constituted by Hon'ble the Chief Justice:

(i) Whether the Armed Forces Tribunal is competent to adjudicate on the vires of statutory legislations other than the Armed Forces Tribunals Act, such as the provisions of Section 9 of the Navy Act, which is involved in the present case?

(ii) Whether the decision in Neelam Chahar (supra) is to be understood as empowering the Armed Forces Tribunal with jurisdiction to adjudicate on the vires of statutory legislations, such as the provisions of the Navy Act?

(iii) Whether, if such an interpretation is adopted, it would extend to all Tribunals, even if they are not constituted under Articles 323A and 323B of the Constitution of India?

36. Let the matter be placed before Hon'ble the Chief Justice for appropriate orders.