REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.447 OF 2023

UNION OF INDIA & ORS. …APPELLANTS

Versus

PARASHOTAM DASS …RESPONDENT

With
C.A.No.457 of 2023 @ S.LP(C) No. 1788/2023
C.A.No.1807 of 2023 @ SLP(C) No. 17320/2017
C.A. No. 5327/2015
C.A.No.449 of 2023 @ SLP(C) No. 20721/2015
C.A.No.448 of 2023 @ SLP(C) No. 20499/2015
C.A.No.450 of 2023 @ SLP(C) No. 26617/2015
C.A.No.451of 2023 @ SLP(C) No. 26568/2015
C.A.No.452 of 2023 @ SLP(C) No. 26620/2015
C.A.No.483 of 2023 @ SLP(C) No. 36386/2015
C.A.No.454 of 2023 @ SLP(C) No. 28101/2016
C.A.No.453 of 2023 @ SLP(C) No. 5111/2016
W.P.(C) No. 76/2016

J U D G M E N T

SANJAY KISHAN KAUL, J.

The prelude to the Armed Forces Tribunal Act, 2007:

1. A large number of cases relating to service matters of members of the three-armed forces of the Union of India had been pending in Courts for a considerable period of time and, thus, the Central Government

engaged in the question of constituting an independent adjudicatory forum for defence personnel. In 1982, the Supreme Court in ***Lt. Col. Prithi Pal Singh Bedi Etc. vs. Union of India & Others***[1] had urged the Central Government to take steps to provide for at least one judicial review in service matters, and in 1992 the Estimate Committee of Parliament in their 19th Report desired as much.

2. The then existing system of administration of justice in these armed services provided for the submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-marital. The establishment of an independent Armed Forces Tribunal was, thus, conceived to fortify the trust and confidence amongst the members of the three services. A Bill was introduced to provide for judicial appeal on points of law and facts against verdicts of Court martial, the absence of which had led to adverse comments from this Court. On the Bill ultimately being passed, the Armed Forces Tribunal Act, 2007, (hereinafter referred to as the '*said Act*') came into being with effect from 15.06.2008 and saw some amendments subsequently.

[1] (1982) 3 SCC 140.

Legal Conundrum:

3. On the said Act coming into force, various issues arose during its implementation. One such issue which begs consideration before us is whether the order passed by the Armed Forces Tribunal would be amenable to challenge in the writ jurisdiction under Article 226 of the Constitution of India before any High Court. The issue needs consideration in a number of matters before us, and the decision on this proposition would result in certain consequential orders being passed in these different matters. Interestingly, in some of the matters including the lead matter, it appears that the objection to exercise jurisdiction under Article 226 of the Constitution of India before the High Court was not even raised, though that exercise is sought to be assailed before us.

Submissions on behalf of the private parties:

4. Mr. Arvind Datar, learned Senior counsel, and Mr. K. Parameshwar, learned counsel, led the arguments on behalf of the persons who were serving in different armed forces. They strongly contended that there could never be a bar to the exercise of jurisdiction under Article 226 of the Constitution of India by the High Court, *albeit,* sometimes, the High Court makes its discretion not to exercise its

jurisdiction. They relied on a Constitution Bench of seven-Judges of this Court in ***L. Chandra Kumar v. Union of India & Others***[2], which unequivocally opined that the power of judicial review under Article 226 is part of the basic structure of the Constitution and all the decisions of a tribunal, whether constituted under Article 323A[3] or 323B[4] of the Constitution, would be subject to the High Court's writ jurisdiction under Article 226 of the Constitution.

5. The discussion in the case of ***L. Chandra Kumar***[5] referred to the judgment of this Court in the seminal case of ***Kesavananda Bharti v. State of Kerala***[6] and many other subsequent judgments. It would be useful to extract the discussion in para 62 of ***L. Chandra Kumar***[7] as under:

> "62. In Kesvananda Bharati case, a thirteen-Judge Constitution Bench, by a majority of 7:6, held that though, by virtue of Article 368, Parliament is empowered to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution or to destroy its basic structure. The identification of the features which constitute the basic structure of our Constitution has been the subject-matter of great debate in Indian Constitutional Law. The difficulty is compounded by the fact that even the judgments for the

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2 (1997) 3 SCC 261.
3 323A. Administrative tribunals.
4 323B. Tribunals for other matters.
5 (supra)
6 AIR 1973 SC 1461
7 (supra)

majority are not unanimously agreed on this aspect. [There were five judgments for the majority, delivered by Sikri, C.J., Shelat & Grover, JJ. Hegde & Mukherjee, JJ. Jaganmohan Reddy, J. and Khanna, J. While Khanna, J. did not attempt to catalogue the basic features, the identification of the basic features by the other Judges are specified in the following paras of the Court's judgments : Sikri, C.J. (para 292), Shelat and Grover, JJ. (para 582), Hegde and Mukherjee, JJ. (paras 632 & 661) and Jaganmohan Reddy, J. (paras 1159, 1161)]. The aspect of judicial review does not find elaborate mention in all the majority judgments. Khanna, J. did, however, squarely address the issue (at para 1529):

> ..The power of judicial review is, however, confined not merely to deciding whether in making the impugned laws the Central or State Legislatures have acted within the four corners of the legislative lists earmarked for them; the courts also deal with the question as to whether the laws are made in conformity with and not in violation of the other provisions of the Constitution... As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by those rights are not contravened.... Judicial review has thus become an integral part of our constitutional system and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of provisions of statutes. If the provisions of the statute are found to be violative of any article of the Constitution, which is touchstone for the validity of all laws, the Supreme Court and the High Courts are empowered to strike down the said provisions."

6. It was further submitted that the exclusion of judicial review under Article 226 of the Constitution ought not to be countenanced because of lack of any viable alternative appeal mechanism. This, in

turn, was based on: *Firstly*, Article 136(2) of the Constitution does not permit any Special Leave to Appeal to the Supreme Court against the order of a court or tribunal constituted by or under any law relating to the Armed Forces. *Secondly*, Section 31 of the said Act states that an appeal to this Court would only lie if "*a point of law of general public importance*" is involved.

7. Thus, as most matters are personal to litigants being in the nature of service matters, and may not involve a point of law of "*general public importance*", a litigant does not have any forum for grievance redressal, except the High Court under Article 226, which it can approach, aggrieved by an order of the Armed Forces Tribunal. Furthermore, the legislature was conscious of the seminality of the jurisdiction under Article 226 of the Constitution while drafting Section 14 of the said Act, which expressly saves the jurisdiction of the High Court from entertaining appeals arising from the Armed Forces Tribunal under Article 226 and Article 227 of the Constitution.

8. Section 14(1) of the said Act reads as under.

> "**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."

9. Learned counsels contended that Articles 226 and 227 of the Constitution are not in *pari materia* and, thus, the limitation imposed under Article 227(4) could not be extended to Article 226 of the Constitution. Article 227(4) begins with the phrase "*Nothing in this Article* …....." implying that the embargo in the provision is only limited to that Article.

10. It would be worthwhile to reproduce Article 227(4), which reads as under:

> **227. Power of superintendence over all courts by the High Court** –
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> .....
>
> (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

11. Thus, even for the sake of argument, were it to be said that Article 227(4) takes away the power of superintendence of the High Court for

matters emanating from courts-martial under Section 15[8] of the said Act, the same will not dilute the power of the High Courts under Article 226 even for matters dealing with courts-martial. In any case, the High Courts have been reluctant to entertain writ petitions against orders under Section 15 of the said Act, and have refused to become a court of second appeal.

12. Learned counsels fortified their arguments on the basis of observations in ***S.N. Mukherjee v. Union of India***[9]***,*** more specifically paragraph 42, where the Supreme Court held that the High Courts, under Article 226, have the power of judicial review even in respect of courts-martial and the High Courts can grant appropriate relief "*if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.*"

13. In the aforesaid context, it was sought to be urged that the observations of a two-Judges' Bench of this Court in ***Union of India &***

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8 Jurisdiction, powers and authority in matters of appeal against court-martial

9 (1990) 4 SCC 594

Ors. v. Major General Shri Kant Sharma & Anr.[10], was against the well-settled principle of law and established judicial precedent since that judgment sought to create a complete bar to the High Court's power to review decisions arising from the Armed Forces Tribunal under Article 226 of the Constitution of India. Such a complete bar is contrary to the Constitution Bench decision of the Supreme Court in ***L. Chandra Kumar***[11] and ***S.N. Mukherjee***[12]. What was significant, it was urged, that the decision in ***Major General Shri Kant Sharma & Anr.***[13] failed to consider that an aggrieved person in a service matter, if restrained from approaching the High Court, would be left with no legal recourse to approach any appellate authority, including the Supreme Court, since service matters are private in nature and do not involve "*point of law of general public importance*" under Section 31 of the said Act read with Article 136(2) of the Constitution.

14. The view, thus, was stated to be in direct conflict with the observations of the seven-Judges' Bench in ***L. Chandra Kumar***[14] in para 79, which reads as under:-

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10 (2015) 6 SCC 773
11 (supra)
12 (supra)
13 (supra)
14 (supra)

> "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."

15. Lastly, it was submitted that the issues are no more *res integra* in view of the recent Constitution Bench Judgment of five-Judges' Bench of this Court in ***Rojer Mathew v. South Indian Bank Ltd. & Ors.***[15] where in paragraph 215, following ***L. Chandra Kumar***[16], this Court settled that the writ jurisdiction under Article 226 does not limit the power of the High Court, expressly or by implication, against military or armed forces dispute and that the restriction under Article 227(4) is only qua administrative supervision by the High Courts and not qua judicial review. Para 215 reads as under:

> "215. It is hence clear post L. Chandra Kumar that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or by implication against military or armed forces disputes. The limited ouster made by Article 227(4) only operates qua administrative supervision by the High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of armed forces tribunals, but would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226."

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15 (2020) 6 SCC 1

16 (supra)

<u>The pleas of Union of India and JAG Branch of the armed forces</u>

16. Mr. Sanjay Jain and Col. Balasubramanium sought to contend that the first half of Section 3(o) of the said Act is amenable to the jurisdiction of the Armed Forces Tribunal and the matters listed in the second half are not amenable to the jurisdiction of the Armed Forces Tribunal. Section 3(o) reads as under:

> "**3. Definitions.**- In this Act, unless the context otherwise requires, -
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> ....
>
> (o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-
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> (i) remuneration (including allowances), pension and other retirement benefits;
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> (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
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> (iii) summary disposal and trials where the punishment of dismissal is awarded;
>
> (iv) any other matter, whatsoever,
>
> but shall not include matters relating to-

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

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

(iii) leave of any kind;

(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;"

17. The appellate mechanism is also stated to be provided under Sections 30 and 31 under Chapter V dealing with appeals of the said Act. Sections 30 and 31 read as under:

"**30. Appeal to the Supreme Court**. - (1) Subject to the provisions of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19):

Provided that such appeal is preferred within a period of ninety days of the said decision or order:

Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

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

Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days from the date of the order appealed against.

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

(a) the execution of the punishment or the order appealed against be suspended; or

(b) if the appellant is in confinement, he be released on bail:

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

....

.....

31. Leave to appeal. - (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

(2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal.

> (3) An appeal shall be treated as pending until any application for leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it might have been made, but it is not made within that time."

18. We must point out here that a reading of Section 30 would show that the appeal provision to the Supreme Court is subject to the provisions of Section 31. Such an appeal under Section 31 would lie with the leave of the Armed Forces Tribunal. The Armed Forces Tribunal shall not grant such leave unless it certifies that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which is to be considered by the Court.

19. There is, thus, no doubt that the appeal mechanism is restrictive in character, something which the Government counsels could not get away from. In the alternative, they urged that if this Court were to come to the conclusion that the High Court would have jurisdiction under Article 226 emanating out of the orders passed by the Armed Forces Tribunal, then that exercise should be restrictive in character. Sections

30 and 31 of the said Act, and Article 136(2) of the Constitution, while dealing with leave to appeal, also put such a restriction.

20. Learned counsel sought embargo from the High Court exercising jurisdiction under Article 226 of the Constitution in the following cases:

i) All cases related to Courts of Inquiry, Court(s) Martial, and Discipline;

ii) All cases related to pension and other retirement benefits, tenure, promotion, retirement, administrative termination of service, such as in cases involving moral turpitude, and leave;

iii) Matters pertaining to the Official Secrets Act; and

iv) Cases relating to espionage/sabotage.

21. The submission was that all disciplinary cases, including courts-martial, which may mandate re-appreciation of evidence may be kept out of the purview of the exercise of the High Court's jurisdiction. The same may amount to a second criminal appeal.

22. An additional plea was made that nothing said in the present judgment should be read as amounting to diluting the jurisdiction of the Supreme Court, which would remain intact. Thus, the observation, as

regards adjudication of a certain category of matters in the writ jurisdiction of the High Court, was only to facilitate smoother administration of justice.

23. Lastly, it was submitted that the nature of the Armed Forces Tribunal must be kept in mind, which is distinct from a normal administrative tribunal under Article 323A or other tribunals under Article 323B of the Constitution and, thus, the High Court should not in routine interfere with the orders of the Armed Forces Tribunal under Article 226 seeking to exercise the jurisdiction akin to say a Central Administrative Tribunal.

Our observations:

24. We have given thought to the matter, keeping in mind the last aspect emphasized by the learned Additional Solicitor General, dealing with the importance of the Armed Forces Tribunal, and its jurisdiction being distinct from other tribunals. We are conscious of the importance of the role performed by the Armed Forces and the discipline level required by these services. Thus, often many jurisprudential principles of other tribunals cannot be imported into the decisions of the Armed Forces Tribunal. The Armed Forces have their own rules and

procedures, and if there is proper exercise of jurisdiction in accordance with the norms of the Armed Forces, the High Court or this Court have been circumspect in interfering with the same, keeping in mind the significance of the role performed by the Armed Forces.

25. While we agree with the aforesaid principle, we are unable to appreciate the observations in the case of ***Major General Shri Kant Sharma & Anr.***[17], which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasized in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.

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17 (supra)

26. On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-a-vis different tribunals, though it has also produced some successes), the same was tested in ***L. Chandra Kumar***[18] case before a Bench of seven Judges of this Court. Thus, while upholding the principles of "Tribunalisation" under Article 323A or Article 323B, the Bench was unequivocally of the view that decisions of Tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42nd Constitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition. The need for the observations in the five-Judges' Bench in ***Rojer Mathew***[19] case qua the Armed Forces Tribunal really arose because of the observations made in ***Major General Shri Kant Sharma & Anr.***[20] Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under

18 (supra)
19 (supra)
20 (supra)

Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution.

27. We also find merit in the contention of the private parties that while the said Act was introduced keeping in mind the earlier observations of the Supreme Court *inter alia* in ***Lt. Col. Prithi Pal Singh Bedi***[21] case, all that has been provided is a single judicial review by the tribunal against the administrative/disciplinary decision as envisaged in the rules applicable to different Armed Forces. Section 31 of the said Act is undoubtedly restrictive in character as an appeal to the Supreme Court would only lie on a point of law of general public importance. There are, as urged by the learned counsels, a number of issues that cropped up, which are personal in character and do not raise issues of larger public importance.

28. We can say with some experience of handling these matters in exercise of jurisdiction under Article 226, prior to the creation of the Armed Forces Tribunal, that there used to be a large number of pension matters. Persons who had served in the Armed Forces were left at bay at the stage of pension. This jurisdiction is also vested with the Armed Forces Tribunal. It would be difficult to say that there would be a larger

[21] (supra)

public interest involved in a pension matter, but then, for that concerned person, it is of great importance. To deny the High Court to correct any error which the Armed Forces Tribunal may fall into, even in exercising jurisdiction under Article 226, would be against the constitutional scheme. The first independent judicial scrutiny is only by the Armed Forces Tribunal. To say that in some matters, a judicial scrutiny would amount to a second appeal, would not be the correct way to look at it. What should be kept in mind is that in administrative jurisprudence, at least two independent judicial scrutinies should not be denied, in our view. A High Court Judge has immense experience. In any exercise of jurisdiction under Article 226, the High Courts are quite conscious of the scope and nature of jurisdiction, which in turn would depend on the nature of the matter.

29. We believe that there is no necessity to carve out certain cases from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench judgment in ***S.N. Mukherjee***[22] case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein, i.e., "*if the*

[22] (supra)

said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record."

30. How can courts countenance a scenario where even in the aforesaid position, a party is left remediless? It would neither be legal nor appropriate for this Court to say something to the contrary or restrict the aforesaid observation enunciated in the Constitution Bench judgment in ***S.N. Mukherjee***[23] case. We would loath to carve out any exceptions, including the ones enumerated by the learned Additional Solicitor General extracted aforesaid as irrespective of the nature of the matter, if there is a denial of a fundamental right under Part III of the Constitution or there is a jurisdictional error or error apparent on the face of the record, the High Court can exercise its jurisdiction. There appears to be a misconception that the High Court would re-appreciate the evidence, thereby making it into a second appeal, etc. We believe that the High Courts are quite conscious of the parameters within which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court.

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[23] (supra)

31. We also fail to appreciate as to why there should be any apprehension of diluting the jurisdiction of the Supreme Court as envisaged under the Act or the constitutional scheme, based on observations made by us in the present judgment.

Conclusion:

32. We have, thus, no hesitation in concluding that the judgment in ***Major General Shri Kant Sharma & Anr.***[24] case does not lay down the correct law and is in conflict with judgments of the Constitution Benches rendered prior and later to it, including in ***L. Chandra Kumar***[25] case, ***S.N. Mukherjee***[26] case, and ***Rojer Mathew***[27] case making it abundantly clear that there is no *per se* restriction on the exercise of power under Article 226 of the Constitution by the High Court. However, in respect of matters of self-discipline, the principles already stand enunciated.

33. We having now dealt with the general propositions, turn to the individual cases as they may require different nature of orders. In fact, a list of the matters and the nature of orders solicited have also been set

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24 (supra)
25 (supra)
26 (supra)
27 (supra)

out by Mr. K. Parameshwar, learned counsel, and are being dealt with as follows:

I. The first category of cases is one where the matters were heard on merits by the respective jurisdictional High Courts but were disposed of as not maintainable in view of the judgment in ***Major General Shri Kant Sharma & Anr.***[28] case. These are not matters raising points of law of general public importance and would have to be examined on merits by each High Court under Article 226 of the Constitution. Thus, these matters are required to be remanded to the respective High Courts for a decision on merits. The case numbers and the name of the parties are as under:

i. SLP(C) No.20721/2015 titled Daxina Kumari v. Union of India.

ii. SLP(C) No.17320/2017 titled K.C. Shibu v. Union of India.

iii. SLP(C) No.20499/2015 titled Krishna Nandan Mishra v. Union of India.

[28] (supra)

iv. SLP(C) No.26617/2015 titled Nand Lal Verma v. Union of India.

v. SLP(C) No.26568/2015 titled Randeep Singh Guleria v. Union of India.

vi. SLP(C) No.26620/2015 titled Gopi Ram v. Union of India.

vii. SLP(C) No.36386/2015 titled Avi Chander Sud v. Union of India.

viii. SLP(C) No.5111/2016 titled Gurcharan Singh v. Union of India; SLP (C) No.28101/2016 titled Nirmal Singh v. Union of India.

ix. SLP(C) No.1788/2023 titled Davinder Singh v. Union of India.

II. SLP(C) No.34797/2014 titled Union of India v. Parashotam Dass, which was filed by the Union of India on merits challenging the judgment of the High Court granting relief to the respondent. The matter would have to be considered by a two Judges Bench of this Court on merits.

III. The Union of India in Civil Appeal No.5327/2015 titled Union of India v. Thomas Vaidyan M., sought reference to a larger Bench as to, whether, a challenge would lie directly to this Court or only before the High Court. As petitions filed under Article 226 of the Constitution against orders of the Armed Forces Tribunal are held to be maintainable, this matter would also require to be remanded to the High Court to be decided on merits since it is a service matter personal to the litigant and does not involve a point of law of general public importance.

IV. The *vires* of Sections 31 and 32 of the said Act were under challenge in WP(C) No.76/2016 titled Gurbux Singh Dhindsa v. Union of India, filed under Article 32 of the Constitution by the father of an Air Force officer who was killed in an operational area in J&K. He was claiming interest over the relief granted by the Armed Forces Tribunal but could not have filed a direct appeal since the matter was personal to the litigant and did not involve any point of law of general public importance and High Courts

were not entertaining matters in view of the judgment in ***Major General Shri Kant Sharma & Anr.***[29] case.

It was submitted that prayer for declaring Sections 30 & 31 as *ultra vires* would not be pressed in case the writ jurisdiction under Article 226 is held to be maintainable and, thus, the prayer was to dispose of this matter with liberty to approach the High Court. We accept the plea and order accordingly.

34. The larger question having been answered, the aforesaid individual matters shall be dealt with depending on the facts of each case, as per the aforesaid directions passed by us.

35. The appeals and the writ petition are disposed of in the aforesaid terms leaving the parties to bear their own costs.

.....J.
[Sanjay Kishan Kaul]

[29] (supra)

.....……J.
[Abhay S. Oka]

.....……J.
[B.V. Nagarathna]

New Delhi.
March 21, 2023.