REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7400 OF 2013

UNION OF INDIA & ORS. … APPELLANTS

VERSUS

MAJOR GENERAL SHRI KANT SHARMA & ANR. … RESPONDENTS

WITH

CIVIL APPEAL NO.7338 OF 2013,
CIVIL APPEAL NOS.7375-7376 OF 2013,
CIVIL APPEAL NO.7399 OF 2013,
CIVIL APPEAL NO.9388 OF 2013,
CIVIL APPEAL NO.9389 OF 2013 AND
CIVIL APPEAL NO.96 OF 2014.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J

In these appeals the question raised is whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the 'Áct'), against an order of Armed Forces Tribunal (hereinafter referred to as the 'Tribunal') with the leave of the Tribunal under Section 31 of the Act or leave granted by the Supreme Court, or bar of leave to appeal before the Supreme Court under Article 136(2) of the Constitution of India, will bar the jurisdiction of the High Court under Article 226 of

the Constitution of India regarding matters related to Armed Forces.

Union of India and others are the appellants in all these appeals except in C.A.No.7338, C.A.No. 7399 of 2013 and C.A.No.96/2014 wherein they are the respondents. The respondents in all these appeals except the three mentioned above are-Army Personnel who moved before the Tribunal for adjudication or trial of disputes and complaints with respect to condition of service. Having not granted relief, the Army personnel assailed the order passed by the Tribunal before the respective High Courts under Article 226 of the Constitution. The appellant in C.A.No.7338 of 2013 on being aggrieved by the order passed by the Armed Forces Tribunal, Regional Bench, Chennai challenged the same before the High Court of Judicature of Andhra Pradesh at Hyderabad. In the cases in hand except C.A.No.7338 of 2013 and C.A.No.96 of 2014 the High Court entertained the writ petitions and adjudicated the disputes. The High Court having granted relief after reversing the order of Tribunal, the Union of India has challenged the same. In C.A.No.7338 of 2013 and C.A.No.96 of 2014, the appellants-Army Personnel have challenged the orders by which High Courts refused to entertain their writ petitions. In C.A. No. 7399 of 2013, the appellant-Army Personnel has challenged the order of Delhi High Court allowing the writ petition of respondent No.2 therein.

2. At the outset, in all the writ petitions preliminary objection was raised on behalf of the Union of India as to the maintainability of the writ petition on the ground that against

the orders impugned a remedy of appeal to the Supreme Court is provided under Section 30 of the Armed Forces Tribunal Act, 2007.

3. Learned counsel appearing on behalf of the Union of India submitted that the High Court cannot entertain writ petitions under Article 226 of the Constitution of India contrary to the law enacted by the Parliament being the Armed Forces Tribunal, 2007 which is a special enactment exclusively provided for an appellate remedy by way of leave before this Court.

Further, according to learned counsel for the Union of India as none of the respondents raised any issue of jurisdiction of the Tribunal and it was essentially a challenge to the order of the Armed Forces Tribunal only on merits. Therefore, the High Court was not correct in entertaining the writ petitions under Article 226 of the Constitution against the well considered and reasoned order passed by the Tribunal.

4. Col. A.D. Nargolkar appeared in person made the following submissions:

(i) The power of judicial review under Article 226 and 227 of the Constitution is an inviolable part of its basic structures. This power cannot be ousted by an Act of Parliament i.e. the Armed Forces Tribunal Act, 2007.

(ii) Section 14 of the Act itself provides for judicial review by the High Court under Article 226 and 227 of the Constitution. There exists clear and recorded legislative intent behind the specific provisions.

(iii) Article 227(4) of the Constitution does not exclude

the jurisdiction of the High Court over the Armed Forces Tribunal as no such Tribunal existed when Article 227(4) of the Constitution was substituted.

Similar submissions were made by the learned Senior Counsel for the respondent-Army Personnel.

5. For the determination of the present issue it is necessary to refer the relevant provisions of the Armed Forces Tribunal Act, 2007, the power of the High Court under Sections 226 and 227 of the Constitution, and the power of Supreme Court under Articles 32 and 136 of the Constitution.

6. The Armed Forces Tribunal Act, 2007 has been enacted to provide for adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force At, 1950 and also to provide for appeals arising out of orders, findings or sentences of Courts-Martial held under the said Acts and for matters connected therewith or incidental thereto.

7. As per Section 14 of the Act, the Armed Forces Tribunal has been established by the Central Government to exercise the jurisdiction, powers and authority conferred on it by the said Act. Section 14 specifies the jurisdiction, powers and authority of the Tribunal in relation to service matters as follows:

> ***"Section 14. Jurisdiction, powers and authority in service matters.-*** *(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except*

the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

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

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

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

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

(f) reviewing its decisions;

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

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

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

It is clear that in relation to service matters the Tribunal has been empowered to exercise the jurisdiction, powers and authority, exercisable by all the Courts except the power of Supreme Court or a High Court exercising jurisdiction under Section 226 and 227 of the Constitution.

8. Section 15 specifies the jurisdiction, powers and authority to be exercised by the Tribunal relating to matters of appeal against the Court-Martial. The said Section reads as fellows:

> ***"Section 15. Jurisdiction, powers and authority in matters of appeal against court-martial.-****(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 under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental therto.*
>
> *(2) Any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.*
>
> *(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:*
>
> *Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.*
>
> *(4) The Tribunal shall allow an appeal against conviction by a court martial where –*
>
> *(a) the finding of the court martial is legally not sustainable due to any reason whatsoever; or*

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice,

but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950, (45 of 1950) as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(j) *remit the whole or any part of the sentence, with or without conditions; (ii) mitigate the punishment awarded;*

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950, (45 of 1950) as the case may be;

(c) enhance the sentence awarded by a court -martial:

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard;

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(d) suspend a sentence of imprisonment;

(e) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 (45 of 1860) of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973. (2 of 1974).”

Sub-section (2) of Section 15 specifies the right of any person to prefer an appeal against order, decision, finding or sentence passed by a Court-Martial.

9. Chapter V of the Act relates to appeal. Section 30 which provides for an appeal to the Supreme Court and Section 31 deals with leave to appeal. The said Sections read as under:

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

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

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

(2) An appeal shall lie to the Supreme Court as

of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt: .

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

Section 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."

10. Section 32 empowers the Supreme Court to condone the delay i.e. to extend the time within which an appeal may be preferred by

the person to the Court under Section 30 or sub-section (2) or Section 31. The said Section reads as follows:

> ***"Section 32.Condonation.-*** *The Supreme Court may, upon an application made at any time by the appellant, extend the time within which an appeal may be preferred by him to that Court under section 30 or sub-section (2) of section 31."*

11. Section 33 excludes the jurisdiction of Civil Courts. Section 34 deals with transfer of pending cases before any court including a High Court or other authority immediately before the date of establishment of the Tribunal, the cause of action of which would have been within the jurisdiction of Tribunal. Sections 33 and 34 read as under:

> ***"Section 33. Exclusion of jurisdiction of civil courts.-*** *On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation-to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.*
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> ***34. Transfer of pending cases.-*** *(1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.*
>
> *(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),—*
>
> *(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;*

> *(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same' manner as in the case of an application made under sub-section (2) of section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit."*

12. A plain reading of the above provisions shows:

i A remedy of appeal to Supreme Court against any final order passed by the Tribunal under Section 30 with the leave of the Tribunal is provided under Section 31 of the Act.

ii In case leave is refused by the Tribunal, an application to the Supreme Court for leave can be made as provided under sub-section (1) and (2) of Section 31 of the Act.

iii Against any order or decision of the Tribunal made under Section 19 in exercise of its jurisdiction to punish for contempt, an appeal under sub-section (2) of Section 30 lies to the Supreme Court as of right.

Section 33 excludes the jurisdiction of the Civil Courts and not the High Court under Article 226 and 227. However, Section 34 relates to transfer of pending cases, suits and cases pending in other courts including the High Court. The suit pending before any Court or High Court may stand transferred if the cause of action comes under the jurisdiction of the Arms Forces Tribunal Act but it does not affect the power of the High Court under Section 226

and 227 of the Constitution.

13. The Parliamentary 10th Standing Committee for Defence in May, 2006 deliberated on the proposed Section 30 and 31 of the Act. Chapter XIV of the recorded deliberations provides insight into the legislative intent and replies/advice of the Law Ministry, relevant portion of which is reproduced below:

> *"**CHAPTER XIV***
> *CLAUSE 30 : JURISDICTION OF TRIBUNAL AND HIGH COURT IN MATTERS RELATING TO APPEAL*
> ***84. Clause 30 provides:-***
> *1. Subject to the provision 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 decisions 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;*
> *(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.*
> *85. The Committee enquired about the nature of the proposed Tribunal, whether it would be a judicial, quasi judicial body in the line of Central Administrative Tribunal, the Ministry replied:-*
> *"Since the Armed Forces Tribunal would be dealing with offences,legally awardable punishments and termination of service etc. and the Tribunal is being armed with the powers of contempt, it would be a judicial body. It would be a permanent Tribunal and a Court of record."*
> *86. When Committee asked, whether appeal would be preferred in High Courts or Supreme Court, the Ministry stated:*

"Clause 30 of the Armed Forces Tribunal Bill, 2005 provides that an appeal against the final decision or order of Armed Forces Tribunal shall lie to the Supreme Court. Under the Constitution, the power of superintendence of High Court is already excluded against a Court Martial verdict."

87. On a specific query to the representatives of the Ministry of Law & Justice, on the issue of appeal against the order of the Tribunal, they stated:-

> *"In a case, L. Chandrakumar's case, which was relating to the Central Administrative Tribunal, which was established by an Act of Parliament, similar provisions were there where an appeal against the orders of the Central Administrative Tribunal was preferred to the Supreme Court but for some time it was entertained by the Supreme Court. But later on, subsequently in L. Chandrakumar's case, the Supreme Court said that the powers of the High Court under articles 226 and 227 cannot be taken away by an Act of Parliament. Thus, you know again from the orders of Central Administrative Tribunal, we have started preferring appeals to the High Court under article 226."*

88. They further supplemented:

> *"It is not only in one case but also subsequently in a number of cases, the Supreme Court reiterated that principle. Many High Courts have reiterated that principle. When in another Bill, that is, National Tax Tribunal was being processed in this Committee Room by another Committee, there also many hon. Members of the Standing Committee said that in view of L. Chandrakumar's case, you cannot have a touch tribunal from which you can directly go to the Supreme Court and we had accede that before that Committee tha article 226 is still there with the High Court. The minute you abolish article 226, then it will be treated by the Supreme Court as a violation of the essential characteristics of the basic structure of the Constitution, which is a limitation even on the power of Parliament to amend the Constitution."*
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> *89. When the Committee asked the Ministry of Law & Justice regarding possible solution of it, they stated that:*
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> *"We have processed the Bill. In the Bill we have taken the precaution that the Chairman of the Tribunal should be a retired judge or a sitting judge of the Supreme Court. If the Chairman of the Tribunal himself is a Supreme Court judge, then you know the High Courts are slightly hesitant in interfering with the judgment.*
>
> *That is only thing but if a judge finds that there is a Constitutional violation of certain fundamental*

rights or there is a gross arbitrariness in an order of the Tribunal, then it will exercise its jurisdiction under article 226."

In this connection, the Ministry of Defence in a written note stated:

"The proposed Armed Forces Tribunal Bill, 2005 does not envisage a situation where an accused can approach the High Court in an appeal against the order of the Tribunal. There can be no equation between the High Court and any other Tribunal. On the other hand, analogy can be drawn between the CAT and the proposed Armed Forces Tribunal. In CAT, single member also constitutes a Bench [section 5(6)]. However, in the Armed Forces Tribunal, the minimum number of members to constitute a Bench is two. Further, as opposed to the CAT where the Chairperson is a serving or retired High Court judge, the Chairperson of the Armed Forces Tribunal is a retired Supreme Court Judge or retired Chief Justice of the High Court. Further Article 227(iv) of the Constitution excludes the power of superintendence of High Courts over any court or Tribunal constituted by or under any law relating to the Armed Forces. Therefore, an accused cannot go to the High Court in appeal against the order of the Armed Forces Tribunal."

90. The Committee note that clause 30 provides that subject to provisions of section 31, an appeal shall lie to Supreme Court against the final decision or order of the Tribunal. The Committee, however, are given to understand that in the case of L. Chanderkumar, where appeal against the order of the Central Administrative Tribunal was preferred to Supreme Court, the Court stated that powers of the High Court under Articles 226 and 227 cannot be taken away by an Act of Parliament. The Committee are of the view that the appeal against the Tribunal should be preferred as per the provisions of the Constitution.

NEW DELHI; BALASAHEB VIKHE PATIL,
16 May, 2006 Chairman,
26 Vaisakha, 1928 (Saka)Standing Committee on Defence."

14. Therefore, it is clear from the scheme of the Act that jurisdiction of the Tribunal constituted under the Armed Forces Tribunal Act is in substitution of the jurisdiction of Civil Court and the High Court so far as it relates to suit relating to condition of service of the persons subject to Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, which are special laws

enacted by the Parliament by virtue of exclusive legislative power vested under Article 246 of the Constitution of India read with Entries 1 & 2 of List I of the Seventh Schedule.

15. <u>Constitution of India</u>

In this context, it is also necessary to notice Articles 32 and 33 of the Constitution. Article 32 falls under Chapter III of the Constitution which deals with fundamental right. The said article guarantees the right to move before the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights conferred by the Part III. Article 32 reads as follows:

> ***"Article 32. Remedies for enforcement of rights conferred by this Part.***—*(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*
>
> *(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
>
> *(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).*
>
> *(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."*

16. Article 33 empowers the Parliament to restrict or abrogate the application of fundamental rights in relation to Armed Forces, Para Military Forces, the Police etc. ***(refer: Ous Kutilingal Achudan Nair vs.Union of India, (1976) 2 SCC 780***). The said

article reads as follows:

> ***"Article 33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.***—*Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—*
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> *(a) the members of the Armed Forces; or*
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> *(b) the members of the Forces charged with the maintenance of public order; or*
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> *(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or*
>
> *(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),*
>
> *be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."*

17. Article 226 empowers High Court to issue prerogative writs. The said Article reads as under:

> ***"Article 226.Power of High Courts to issue certain writs.-*** *(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, toissue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including 1[writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*
>
> *(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such*

Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

18. Article 227 relates to power of superintendence of High Courts over all Courts and Tribunals. It reads as follows:

"Article 227. Power of superintendence over all courts by the High Court.- *(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.*

(2) Without prejudice to the generality of the

foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(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."

19. In this context, it is also necessary to notice Article 136 of the Constitution which provides special leave to appeal to Supreme Court:

*"**136.Special leave to appeal by the Supreme Court.-**(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

In view of clause (2) of Article 136 which expressly excludes

the judgments or orders passed by any Court or Tribunal constituted by or under any law relating to Armed Forces, the aggrieved persons cannot seek leave under Article 136 of Constitution of India; to appeal from such judgment or order. But right to appeal is available under Section 30 with leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007.

20. We may also refer to Article 227(4) of the Constitution, which reads as under:

> *"**Article 227(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."*

Thus, we find that there is a constitutional bar not only under Article 136(2) but also under Article 227(4) of the Constitution of India with regard to entertaining any determination or order passed by any court or Tribunal under law relating to Armed Forces.

21. Judicial review under Article 32 and 226 is a basic feature of the Constitution beyond the plea of amendability. While under Article 32 of the Constitution a person has a right to move before Supreme Court by appropriate proceedings for enforcement of the rights conferred by Part III of the Constitution, no fundament right can be claimed by any person to move before the High Court by appropriate proceedings under Article 226 for enforcement of the rights conferred by the Constitution or Statute.

22. In ***L. Chandra kumar vs. Union of India, (1997)3 SCC 261*** a Bench of seven-Judge while dealing with the essential and basic

features of Constitution – power of review and jurisdiction conferred on the High Court under Article 226/227 and on the Supreme Court under Article 32 held as follows:

> ***"75.*** *In Keshav Singh*, (1965) 1 SCR 413 *while addressing this issue, Gajendragadkar, C.J. stated as follows: (SCC at pp. 493-494)*
>
> *"If the power of the High Courts under Article 226 and the authority of this Court under Article 32 are not subject to any exceptions, then it would be futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court in that behalf; otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless. Let it not be forgotten that the judicial power conferred on the High Courts and this Court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case."*
>
> *(emphasis added)*
>
> ***76.*** *To express our 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 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The doctrine of basic structure was evolved in Kesavananda Bharati case (1993 4 SCC 225). However, as already mentioned, that case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution. Indeed, in the judgments of Shelat and Grover, JJ., Hegde and Mukherjea, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are*

illustrative and are not intended to be exhaustive. In Indira Gandhi case, (1975 Supp SCC 1), Chandrachud, J. held that the proper approach for a Judge who is confronted with the question whether a particular facet of the Constitution is part of the basic structure, is to examine, in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country. (supra at pp. 751-752). This approach was specifically adopted by Bhagwati, J. in Minerva Mills case [(1980) 3 SCC 625] (at pp. 671-672) and is not regarded as the definitive test in this field of Constitutional Law.

***77.** We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this Court that have been referred to in the course of our analysis. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadkar, C.J. in Keshav Singh case, Beg, J. and Khanna, J. in Kesavananda Bharati case, Chandrachud, C.J. and Bhagwati, J. in Minerva Mills, Chandrachud, C.J. in Fertilizer Kamgar[(1981) 1 scc 568], K.N. Singh, J. in Delhi Judicial Service Assn. [(1991)4 scc 406], etc.] the rest have made general observations highlighting the significance of this feature."*

23. In ***S.N. Mukherjee vs.Union of India, (1990)4 SCC 594,*** this Court noticed the special provision in regard to the members of the Armed Forces in the Constitution of India and held as follows:

*." **42.** Before referring to the relevant provisions of the Act and the Rules it may be mentioned that*

the Constitution contains certain special provisions in regard to members of the Armed Forces. Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part III shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. By clause (2) of Article 136 the appellate jurisdiction of this Court under Article 136 of the Constitution has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. Similarly clause (4) of Article 227 denies to the High Courts the power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces. This Court under Article 32 and the High Courts under Article 226 have, however, the power of judicial review in respect of proceedings of courts martial and the proceedings subsequent thereto and 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."

24. A three-Judge Bench of this Court in ***R.K. Jain vs. Union of India & ors., (1993) 4 SCC 119,*** observed:

"66. *In S.P. Sampath Kumar v. Union of India this Court held that the primary duty of the judiciary is to interpret the Constitution and the laws and this would predominantly be a matter fit to be decided by the judiciary, as judiciary alone would be possessed of expertise in this field and secondly the constitutional and legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. The Constitution has, therefore, created an independent machinery i.e. judiciary to resolve disputes, which is vested with the power of judicial review to determine the legality of the legislative and executive actions and to ensure compliance with the requirements of law on the part of the executive and other authorities. This function is discharged by the*

judiciary by exercising the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution and to provide alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. It must, therefore, be read as implicit in the constitutional scheme that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it, must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it which must be equally effective and efficacious in exercising the power of judicial review. The tribunal set up under the Administrative Tribunals Act, 1985 was required to interpret and apply Articles 14, 15, 16 and 311 in quite a large number of cases. Therefore, the personnel manning the administrative tribunal in their determinations not only require judicial approach but also knowledge and expertise in that particular branch of constitutional and administrative law. The efficacy of the administrative tribunal and the legal input would undeniably be more important and sacrificing the legal input and not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal. Therefore, it was held that an appropriate rule should be made to recruit the members; and to consult the Chief Justice of India in recommending appointment of the Chairman, Vice-Chairman and Members of the Tribunal and to constitute a committee presided over by Judge of the Supreme Court to recruit the members for appointment. In M.B. Majumdar v. Union of India when the members of CAT claimed parity of pay and superannuation as is available to the Judges of the High Court, this Court held that they are not on a par with the judges but a separate mechanism created for their

appointment pursuant to Article 323-A of the Constitution. Therefore, what was meant by this Court in Sampath Kumar case ratio is that the tribunals when exercise the power and functions, the Act created institutional alternative mechanism or authority to adjudicate the service disputations. It must be effective and efficacious to exercise the power of judicial review. This Court did not appear to have meant that the tribunals are substitutes of the High Court under Articles 226 and 227 of the Constitution. J.B. Chopra v. Union of India merely followed the ratio of Sampath Kumar."

25. From the aforesaid decisions of this Court in ***L. Chandra and S.N. Mukherjee,*** we find that the power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.

26. <u>Basic principle for exercising power under Article 226 of the Constitution:</u>

In ***Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot and others, AIR 1974 SC 2105*** this Court held as follows:

> *"**9.....**Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (See Gunwant Kaur v.Bhatinda Municipality, AIR 1970 SC 802). If, however,on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity*

with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

27. In ***Mafatlal Industries Ltd. and others vs.Union of India and others, (1997) 5 SCC 536,*** a nine-Judge Bench of this Court while considering the Excise Act and Customs Act held that the jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. This Court held:

> ***"108.*** *The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.*
>
> *(i).....While the jurisdiction of the High Courts under Article 226 — and of this Court under Article 32 — cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.*
>
> *Xxx xxx xxx xxx*

28. In ***Kanaiyalal Lalchand and Sachdev and others vs. State of Maharasthra and others, (2011) 2 SCC 782,*** this Court considered

the question of maintainability of the writ petition while an alternative remedy is available. This Court upheld the decision of the Bombay High Court dismissing the writ petition filed by the appellants therein on the ground of existence of an efficacious alternative remedy under Section 17 of SARFASI Act and held:

> ***"23.*** *In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd., Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories[7].)*
>
> ***24.*** *In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala this Court had observed that: (SCC p. 175, para 30)*
>
> *"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
>
> *(a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
>
> *(b) the petition reveals all material facts;*
>
> *(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
>
> *(d) the person invoking the jurisdiction is guilty of unexplained delay and laches;*
>
> *(e) ex facie barred by any laws of limitation;*
>
> *(f) grant of relief is against public policy or barred by any valid law; and host of other factors."*

29. In ***Nivedita Sharma vs. Cellular Operators Association of India and others, (2011)14 SCC 337,*** this Court noticed that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Court further noticed the previous decisions of this Court wherein the Court adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person as follows:

> ***13.*** *In Titaghur Paper Mills Co. Ltd. v. State of Orissa this Court observed: (SCC pp. 440-41, para 11)*
>
> *"11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage: (ER p. 495)*
>
> *'… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'*
>
> *The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. and Secy. of State v. Mask and Co. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing*

the writ petitions in limine."

14. *In Mafatlal Industries Ltd. v. Union of India B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)*

"77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

15. *In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.*

16. *It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes[8] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field."*

30. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another vs. Sri Seetaram Rice Mill, (2012) 2 SCC 108,*** a three-Judge Bench held:

*"**80.** It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the civil courts. The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases, particularly, where the cases involve a pure question of law or vires of an Act are challenged. This class of cases we are mentioning by way of illustration and should not be understood to be an exhaustive exposition of law which, in our opinion, is neither practical nor possible to state with precision. The availability of alternative statutory or other remedy by itself may not operate as an absolute bar for exercise of jurisdiction by the courts. It will normally depend upon the facts and circumstances of a given case. The further question that would inevitably come up for consideration before the Court even in such cases would be as to what extent the jurisdiction has to be exercised.*

***81.** Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case."*

31. In ***Cicily Kallarackal*** vs. ***Vehicle Factory 2012(8) SCC 524,*** the Division Bench of this Court held:

> *"**4.** Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.*
>
> *XXX XXX XXX XXX*
>
> ***9.** ....., we hereby make it clear that the orders of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27-A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission."*

32. Another Division Bench of this Court in ***Commissioner of Income Tax and others vs. Chhabil Dass Agrawal, (2014)1 SCC 603*** held:

> *"**11.** Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the*

discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh, Titaghur Paper Mills Co. Ltd. v. State of Orissa, Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and State of H.P. v. Gujarat Ambuja Cement Ltd.

12. *The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission, Sangram Singh v. Election Tribunal, Union of India v. T.R. Varma, State of U.P. v. Mohd. Nooh*[2] *and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar v. G. Raja Nainar, Municipal Council, Khurai v. Kamal Kumar, Siliguri Municipality v. Amalendu Das, S.T. Muthusami v. K. Natarajan, Rajasthan SRTC v. Krishna Kant, Kerala SEB v. Kurien E. Kalathil, A. Venkatasubbiah Naidu v. S. Chellappan, L.L. Sudhakar Reddy v. State of A.P., Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, Pratap Singh v. State of Haryana and GKN Driveshafts (India) Ltd. v. ITO.]*

13. *In Nivedita Sharma v. Cellular Operators Assn. of India, this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)*

"12. In Thansingh Nathmal v. Supt. of Taxes this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)

'7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa this Court observed: (SCC pp. 440-41, para 11)

'11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage: (ER p. 495)

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***14.** In Mafatlal Industries Ltd. v. Union of India B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)*

'77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It

is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'"

(See G. Veerappa Pillai v. Raman & Raman Ltd., CCE v. Dunlop India Ltd., Ramendra Kishore Biswas v. State of Tripura, Shivgonda Anna Patil v. State of Maharashtra, C.A. Abraham v. ITO, Titaghur Paper Mills Co. Ltd. v. State of Orissa, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons, Whirlpool Corpn. v. Registrar of Trade Marks, Tin Plate Co. of India Ltd. v. State of Bihar, Sheela Devi v. Jaspal Singh and Punjab National Bank v. O.C. Krishnan.)

***15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

33. <u>Statutory Remedy</u>

In *Union of India vs. Brigadier P.S. Gill, (2012) 4 SCC 463,* this Court while dealing with appeals under Section 30 of the Armed Forces Tribunal Act following the procedure prescribed under

Section 31 and its maintainability, held as follows:

> *"**8.** Section 31 of the Act extracted above specifically provides for an appeal to the Supreme Court but stipulates two distinct routes for such an appeal. The first route to this Court is sanctioned by the Tribunal granting leave to file such an appeal. Section 31(1) in no uncertain terms forbids grant of leave to appeal to this Court unless the Tribunal certifies that a point of law of general public importance is involved in the decision. This implies that Section 31 does not create a vested, indefeasible or absolute right of filing an appeal to this Court against a final order or decision of the Tribunal to this Court. Such an appeal must be preceded by the leave of the Tribunal and such leave must in turn be preceded by a certificate by the Tribunal that a point of law of general public importance is involved in the appeal.*
>
> ***9.** The second and the only other route to access this Court is also found in Section 31(1) itself. The expression "or it appears to the Supreme Court that the point is one which ought to be considered by that Court" empowers this Court to permit the filing of an appeal against any such final decision or order of the Tribunal.*
>
> ***10.** A conjoint reading of Sections 30 and 31 can lead to only one conclusion viz. there is no vested right of appeal against a final order or decision of the Tribunal to this Court other than those falling under Section 30(2) of the Act. The only mode to bring up the matter to this Court in appeal is either by way of certificate obtained from the Tribunal that decided the matter or by obtaining leave of this Court under Section 31 for filing an appeal depending upon whether this Court considers the point involved in the case to be one that ought to be considered by this Court.*
>
> ***11.** An incidental question that arises is: whether an application for permission to file an appeal under Section 31 can be moved directly before the Supreme Court without first approaching the Tribunal for a certificate in terms of the first part of Section 31(1) of the Act?*

> ***12.*** *In the ordinary course the aggrieved party could perhaps adopt one of the two routes to bring up the matter to this Court but that does not appear to be the legislative intent evident from Section 31(2) (supra). A careful reading of the section shows that it not only stipulates the period for making an application to the Tribunal for grant of leave to appeal to this Court but also stipulates the period for making an application to this Court for leave of this Court to file an appeal against the said order which is sought to be challenged.*
>
> ***13.*** *It is significant that the period stipulated for filing an application to this Court starts running from the date beginning from the date the application made to the Tribunal for grant of certificate is refused by the Tribunal. This implies that the aggrieved party cannot approach this Court directly for grant of leave to file an appeal under Section 31(1) read with Section 31(2) of the Act.*
>
> ***14.*** *The scheme of Section 31 being that an application for grant of a certificate must first be moved before the Tribunal, before the aggrieved party can approach this Court for the grant of leave to file an appeal. The purpose underlying the provision appears to be that if the Tribunal itself grants a certificate of fitness for filing an appeal, it would be unnecessary for the aggrieved party to approach this Court for a leave to file such an appeal. An appeal by certificate would then be maintainable as a matter of right in view of Section 30 which uses the expression "an appeal shall lie to the Supreme Court". That appears to us to be the true legal position on a plain reading of the provisions of Sections 30 and 31."*

Thus, we find that though under Section 30 no person has a right of appeal against the final order or decision of the Tribunal to this Court other than those falling under Section 30(2) of the Act, but it is statutory appeal which lies to this Court.

34. The aforesaid decisions rendered by this Court can be

summarised as follows:

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.(Refer: ***L. Chandra and S.N. Mukherjee).***

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.(Refer: ***Mafatlal Industries Ltd.).***

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: ***Nivedita Sharma).***

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma).***

35. Article 141 of the Constitution of India reads as follows:

> "***Article 141.Law declared by Supreme Court to be binding on all courts.-****The law declared by the Supreme Court shall be binding on all courts within the territory of India."*

36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited(SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

In ***Cicily Kallarackal*** this Court issued a direction of caution that it will not be a proper exercise of the jurisdiction by the High Court to entertain a writ petition against such orders against which statutory appeal lies before this Court.

In view of Article 141(1) the law as laid down by this Court, as referred above, is binding on all courts of India including the High Courts.

37. <u>Likelihood of anomalous situation</u>

If the High Court entertains a petition under Article 226 of the Constitution of India against order passed by Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court.

Section 30 provides for an appeal to this Court subject to leave granted under Section 31 of the Act. By clause (2) of Article 136 of the Constitution of India, the appellate jurisdiction of this Court under Article 136 has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or Tribunal constituted by or under any law relating to the Armed Forces. If any person aggrieved by the order of the Tribunal, moves before the High Court under Article 226 and the High Court entertains the petition and passes a judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law

laid down by this Court as referred to above, which is binding on the High Court under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition under Article 226 of the Constitution bypassed the machinery created under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions under Article 226 and directed the writ petitioners to seek resort under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy under Section 30 with leave to appeal under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court.

40. The Civil Appeal Nos.7400, 7375-7376, 7399, 9388, 9389 of 2013 are allowed and the Civil Appeal Nos.7338 of 2013 and 96 of 2014

are dismissed.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(N.V. RAMANA)

NEW DELHI,
MARCH 11, 2015.

ITEM NO.1C COURT NO.1 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7400/2013

UNION OF INDIA & ORS. Appellant(s)

VERSUS

MAJOR GENERAL SHRI KANT SHARMA & ANR. Respondent(s)

WITH C.A. No. 7338/2013

C.A. Nos. 7375-7376/2013

C.A. No. 7399/2013

C.A. No. 9388/2013

C.A. No. 9389/2013

C.A. No. 96/2014

Date : 11/03/2015 These appeals were called on for pronouncement of the Judgment today.

For Appellant(s) **Ms.Pinky Anand, ASG**
Mr. B. V. Balaram Das,Adv.
Ms.Binu Tamta,Adv.
Mr.P.Bagchi, Adv.
Mr.Amit Kumar, Adv.
Mrs. Anil Katiyar,Adv.

Mr.B.Adi Narayana Rao, Sr.Adv.
Mr.M.Srinivas R.Rao, Adv.
Mr.Abid Ali Beeran P., Adv.
Mr.Arun Devdas, Adv.
Mrs. Sudha Gupta,Adv.

Mr.Guru Krishna Kumar, Sr.Adv.
Mr. Sridhar Potaraju,Adv.
Mr.Gaichangpou Gangmei, Adv.
Mr.A.Mukunda Rao, Adv.
Mr.Arjun Singh, Adv.
Ms.Sneha, Adv.

Mr. Shekhar Kumar,Adv.
Mr.Janme Jay, Adv.

For Respondent(s) **Ms.Jyoti Singh, Sr.Adv.**
Ms.Tinu Bajwa, Adv.
Mr.Amandeep Joshi, Adv.
Mr.Sameer Sharma, Adv.
Mr. Sudarshan Rajan,Adv.
Ms.Shriya Raj Chauhan, Adv.

Respondent-in-person.

Ms.Jyoti Singh, Sr.Adv.
Mrs. Priya Puri,Adv.
Mr.Biswajit Ray, Adv.
Mr.Ranjan Kumar Dubey, Adv.

Hon'ble Mr.Justice Sudhansu Jyoti Mukhopadhaya pronounced the Judgment of the Bench comprising His Lordship and Hon'ble Mr.Justice N.V.Ramana.

The Civil Appeal Nos.7400, 7375-7376, 7399, 9388, 9389 of 2013 are allowed and Civil Appeal Nos.7338 of 2013 and 96 of 2014 are dismissed, in terms of the signed reportable judgment.

(G.V.Ramana) **(Vinod Kulvi)**
Court Master **Asstt.Registrar**
(Signed reportable judgment is placed on the file)