IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1843 OF 2021

Param Bir Singh ...Petitioner

Versus

The State of Maharashtra & ors. ...Respondents

WITH

INTERIM APPLICATION NO. 1602 OF 2021

IN

WRIT PETITION NO. 1843 OF 2021

Anup Sambhaji Dange ...Applicant

In the matter between

Param Bir Singh ...Petitioner

Versus

The State of Maharashtra & ors. ...Respondents

Mr. Mahesh Jethmalani, Senior Advocate, a/w Ms. Gunjan Mangala, Mr. Ravi Sharma, Mr. Utsav Trivedi, i/b Mr. Ajay L. Bhise, for the Petitioner.

Mr. Anil C. Singh, ASG, a/w Mr. Sandesh Patil, Mr. Aditya Thakkar and Mr. D. P. Singh, for Respondent no.2/CBI.

Mr. Darius Khambata, Senior Advocate, a/w Mr. J. P. Yagnik, APP a/w Mr. Akshay Shinde, for the State/Respondent no.1.

Mr. Navroz H. Seervai, Senior Advocate, for Respondent no.3.

Mr. Shrikrishna Ganbavale, a/w Mr. Daljeet Bhatia and Mr. Shubham K. Kanade, for the Applicant – Intervenor in IA/1602/ 2021.

CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.
RESERVED ON: 28th JULY, 2021.
PRONOUNCED ON: 16th SEPTEMBER, 2021.

ORDER:- [PER : N. J. JAMADAR, J.]

1. The petitioner, who was the Commissioner of Police, Mumbai, at the relevant time, has instituted this petition under Article 226 of the Constitution of India for a two-fold relief. One, direct respondent no.2 – CBI to also inquire/investigate into the criminal conspiracy and malicious attempts to thwart the preliminary inquiry directed by this Court and the resultant investigations in FIR No.RC 2232021 A003, dated 21st April, 2021, registered against the then Home Minister, Government of Maharashtra and unknown others. Two, quash and set aside orders dated 1st April, 2021 and 20th April, 2021 issued by respondent no.1 – State, directing respondent no.3, the Director General of Police, Maharashtra to conduct preliminary inquiry against the petitioner and submit report.

2. When the petition was listed before this Court on 4th May, 2021, a preliminary objection was raised on behalf of respondent no.1 – State to the tenability of the petition as the subject matter and principal reliefs in the petition were in the realm of exclusive jurisdiction vested with the Central Administrative Tribunal.

3. In the backdrop of the preliminary objection, we are called upon to consider the maintainability of the petition before this Court.

4. To begin with, it may be apposite to briefly note the factual backdrop:

(a) The petitioner is an IPS Officer of the batch of 1988. On 29th February, 2020, the petitioner was appointed as the Commissioner of Police, Mumbai. By an order dated 17th March, 2021, the petitioner was transferred as Commandant General of Home Guard, Maharashtra State, Mumbai, purportedly on account of the "administrative exigency". However, on 18th March, 2021, it was widely reported in the media that the then Home Minister made statements to the effect that there were lapses on the part of the petitioner in handling of an incident of an explosive laden vehicle being found near the residence of an industrialist and the transfer of the petitioner was not on administrative grounds. Taking umbrage to the media reports, the petitioner addressed a letter to the Hon'ble Chief Minister on 20th March, 2021. In the said letter the petitioner adverted to the alleged malpractices and misdeeds of the then Home Minister. Initially, the petitioner filed a writ petition before the Supreme Court, being Writ Petition (C) No.385 of 2021, seeking, *inter alia,* CBI probe into allegations against the then Home Minister. However, the petitioner withdrew the said writ petition and, availing the liberty granted by the Supreme Court, filed PIL

No.6/2021 before this Court. By an order dated 5th April, 2021 in Criminal Writ Petition No.1541/2021 and the connected matters, this Court directed CBI to initiate a preliminary inquiry into the complaint of Dr. Patil, which had the letter of the petitioner addressed to the Hon'ble Chief Minister as an annexure, in accordance with law. It was further directed that, post completion of preliminary inquiry, the Director, CBI, was at liberty to decide on the future course of action, also in accordance with law.

(b) In the backdrop of aforesaid prelude, the petitioner alleges that respondent no.1 – State initiated retaliatory and *mala fide* action against the petitioner. It is averred that after Criminal Writ Petition No.1541 of 2021 was heard on 31st March, 2021 and order reserved, respondent no.1 issued impugned administrative order dated 1st April, 2021 entrusting preliminary inquiry to respondent no.3 - Mr. Sanjay Pande, the then Director General, Maharashtra State Security Corporation, Mumbai, in the matter of alleged failure on the part of the petitioner to control and supervise his subordinates, negligence and carelessness in not submitting report to the Government, breach of All India Service (Conduct) Rule, 1968 and failure to provide factual, complete and accurate information to superiors

during the Budget Session of State Legislature in the aforesaid case of explosives scare.

(c) On 20th April, 2021, by another impugned order, respondent no.3, now the Director General of Police, was directed to conduct a preliminary inquiry into all the issues raised by Mr. Anup Sambhaji Dange, the then Inspector of Police, Gamdevi Police Station, in the complaint dated 2nd February, 2021, wherein allegations were made against the petitioner.

(d) The petitioner alleges that the initiation of the aforesaid preliminary inquiries is actuated by a malicious design to wreck vengeance for exposing the corrupt malpractice of the then Home Minister and approaching the judiciary. The disclosures made by the petitioner were in public interest and in discharge of constitutional duties and, therefore, the petitioner is legitimately entitled to be protected as a whistle blower. The inquiries initiated against the petitioner is an attempt on the part of respondent no.1 to silence the petitioner by subjecting him to frivolous inquiries as a measure of punishment. The initiation of the inquiries immediately after the petitioner exposed the corrupt malpractices of the then Home Minister and approached the Constitutional Courts is a pointer to the

mala fide action. Moreover, under the impugned order dated 1st April, 2021, respondent no.3 was professed to be empowered with the powers under Section 32 of the Code of Criminal Procedure, 1973 ("the Code"). Invocation of Section 32 of the Code in an administrative inquiry purportedly instituted to enquire into violation of All India Services (Conduct) Rules, 1968 is a sheer abuse of the process of law. It lays bare the manifest malice in the impugned action.

(e) The petitioner has made allegations against respondent no.3, as well. The substance of the allegations against respondent no.3 is that respondent no.3 made an attempt to prevail upon the petitioner to withdraw the allegations levelled by the petitioner in the letter dated 20th March, 2021 addressed to the Hon'ble Chief Minister. The petitioner claimed that on 19th April, 2021, the petitioner addressed communication to the Director and other officers of CBI incorporating therein the transcript of the conversations between the petitioner and respondent no.3 (which were recorded by the petitioner) to bring to their notice the alleged conspiracy hatched to thwart the preliminary inquiry then being conducted by the CBI and subject him to multiple prejudicial proceedings (Exhibit 'C' to the petition).

(f) The petitioner thus avers that initiation of action against the petitioner is a textbook case of *mala fide* action being simultaneously undertaken by the State in order to avenge and protect the then Home Minister against the far reaching consequence of CBI inquiry ordered by this Court. In the process, the fundamental and statutory rights of the petitioner stand blatantly infringed. Hence, this petition.

5. An affidavit-in-reply is filed on behalf of respondent no.1 State for the limited purpose of opposing the maintainability of the petition. Respondent no.1 contends that since the petitioner alleges violation of service rules, the reliefs claimed in the petition are required to be agitated before the Central Administrative Tribunal, which constitutes an efficacious, alternate remedy and, therefore, the petition is not maintainable before this Court. It is further contended that the grievance of the petitioner qua entrustment of the inquiry to respondent no.3 does not survive as respondent no.3 vide letter dated 30th April, 2021 has recused himself from conducting inquiry in terms of order dated 1st and 20th April, 2021. By an order dated 3rd May, 2021, the inquiry vide letter dated 1st April, 2021 is entrusted to the Additional Chief Secretary, Planning Department, and the inquiry initiated vide letter dated 20th April, 2021 is entrusted to

the Director General, Anti Corruption Bureau, Maharashtra. Thus, according to respondent no.1, nothing survives for consideration in this petition.

6. In the light of the aforesaid factual backdrop and pleadings, we have heard Mr. Darius Khambata, the learned Senior Counsel for respondent no.1 – State, Mr. Navroz Seervai, the learned Senior Counsel for respondent no.3, Mr. Srikrishna Ganbavale, the learned Counsel for Mr. Anup Dange, the applicant – Intervenor in IA1602/2021, Mr. Mahesh Jethmalani, the learned Senior Counsel for the petitioner and Mr. Anil Singh, the learned Additional Solicitor General for respondent no.2 – CBI on the point of maintainability of the petition. With the assistance of the learned Counsel for the parties, we have perused the material on record including the pleadings in the previous proceedings which have been referred to in the instant petition.

7. Mr. Khambata, the learned Senior Counsel for respondent no.1 – State, submitted that the instant petition purportedly under Article 226 of the Constitution of India is completely untenable before the High Court in the face of the remedy available to the petitioner under the provisions of the Administrative Tribunals Act, 1985 ("the Act, 1985") before the

Central Administrative Tribunal. Inviting the attention of the Court to the provisions of Sections 14, 15, 28 and 33 of the Act 1985 Mr. Khambata urged that the Central Administrative Tribunal has been conferred with exclusive jurisdiction in relation to all service matters concerning a member of any All Indian Services. Recourse to writ jurisdiction is thus simply impermissible.

8. Amplifying the challenge Mr. Khambata urged that in the face of the provisions contained in the Act, 1985, and judicial interpretation thereof, the issue is not confined to mere existence of an alternate remedy. It traverses beyond the traditional self-imposed restraint on the writ courts, in the face of existence of an alternate remedy, and bears upon the rationale of exercise of jurisdiction when exclusive jurisdiction is conferred upon the Tribunal constituted under the Act, 1985. To bolster up this submission Mr. Khambata placed a strong reliance on the Seven Judge Bench judgment of the Supreme Court in the case of ***L. Chandra Kumar vs. Union of India and others***[1] and another judgment of the Supreme Court in the case of ***Kendriya Vidyalaya Sangathan and another vs. Subahs Sharma***[2]

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1 (1997) 3 SCC 261.

2 (2002) 4 SCC 145.

9. Mr. Khambata further submitted that the substratum of the petitioner's claim that he is being victimized and the actions initiated against the petitioner are *mala fide* can very well be enquired into by the Central Administrative Tribunal. In any event, according to Mr. Khambata, the petitioner cannot have immunity from all the actions for all the time, for the only reason that the petitioner made certain allegations against the functionary of the State. Moreover, the action cannot be scuttled, without inquiry, in a manner known to law, on account of the *mala fide* or vendetta of the person at whose instance the action is initiated. To bolster up this submission, Mr. Khambata placed reliance on the judgments of the Supreme Court in the cases of ***Sheonandan Paswan vs. State of Bihar & others,[3] State of Haryana and others vs. Bhajan Lal and others[4]*** and ***M. Narayandas vs. State of Karnataka and others.[5]***

10. Mr. Seevai, the learned Senior Counsel for respondent no.3, supplemented the submissions of Mr. Khambata. Mr. Seervai laid emphasis on the definition of "service matters" under Clause (q) of Section 3 of the Act 1985, which is of wide amplitude. Emphasis was also laid on Section 19(1) of the Act, 1985 which enables a person aggrieved by any order pertaining

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3 (1987) 1 Supreme Court Cases 288.

4 1992 Supp (1) Supreme Court Cases 335.

5 (2003) 11 Supreme Court Cases 251.

to any matter within the jurisdiction of a Tribunal to make an application to the Tribunal for the redressal of his grievance, to buttress the submission that the jurisdiction is conferred on the Administrative Tribunal in widest possible terms and all matters which fall within the ambit of the term "service matters", including disciplinary matters, are amenable to the exclusive jurisdiction of the Tribunal. Mr. Seervai thus urged that a complete adequate alternative equally efficacious remedy is available to the petitioner. Therefore, the petition deserves to be dismissed at the threshold.

11. Mr. Ganbavle, the learned Counsel for the applicant – Intervenor, submitted that the intervenor had lodged a complaint against the petitioner on 2nd February, 2021, much before the controversy arose over the explosives scare. The petitioner thus cannot be permitted to urge that the action initiated against the petitioner is with a view to give a counter-blast to the actions of the petitioner in approaching the Constitutional Courts.

12. Mr. Mahesh Jethmalani, the learned Senior Counsel for the petitioner, stoutly submitted that the challenge to the tenability of the petition is thoroughly misconceived. Mr. Jethmalani would urge that there can be no quarrel with the

propositions enunciated in ***L. Chandra Kumar*** (supra) ***Sheonandan Paswan*** (supra). However, according to Mr. Jethmalani, the core underlying issue in this petition is the nature of inquiry professed to be initiated by the impugned orders. The attendant circumstances cannot be lost sight of. On 1st April, 2021, the day impugned order instituting preliminary inquiry was issued, the then Home Minister, against whom the petitioner had made serious allegations, was still firmly in the saddle. Inquiry was ordered while the petition preferred by the petitioner and the connected petitions were still subjudice before this Court. Moreover, the intrinsic evidence of the order dated 1st April, 2021, betrays *mala fide*, submitted Mr. Jethmalani. Elaborating this ground, Mr. Jethmalani would urge that "preliminary inquiry" is an expression more compatible with the inquiry conducted by the police prior to arriving at a decision to register FIR. Secondly, the entrustment of powers under Section 32 of the Code is a definite pointer to the *mala fide* design with which the action was actuated.

13. Extensively taking the Court through the transcripts of the alleged conversation between the petitioner and respondent no.3 Mr. Jethmalani submitted that respondent no.3 was acting at the behest of respondent no.1 – State. The entire exercise was

driven by a design to make the petitioner buckle under pressure and withdraw the allegations levelled against the then Home Minister. The recusal of respondent no.3, in such circumstances, is of no significance. Mr. Jethmalani made an endeavour to demonstrate that the entrustment of inquiries vide order dated 3rd May, 2021 to the Additional Chief Secretary, Planning Department and the Director General, Anti Corruption Bureau, is also fraught with insurmountable legal infirmities. While summing up, Mr. Jethmalani submitted that having regard to the enormity of the issues raised by the petitioner, in public interest, staking his carrier and life at risk, this Court would be justified in exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India as the remedy before the Administrative Tribunal cannot be said to be equally efficacious.

14. The aforesaid submissions now fall for consideration. Since the challenge revolves around the tenability of the petition in the light of the statutory remedy before the Central Administrative Tribunal, it may be apposite to note relevant provisions of the Act, 1985. Relevant part of Section 14 which delineates the jurisdiction, powers and authority of the Central Administrative Tribunal, reads as under:

> "**14. Jurisdiction, powers and authority of the Central Administrative Tribunal.**— (1) Save as otherwise expressly provided in this Act, the Central Administrative 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 1[***] in relation to—
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> (a) .....
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> (b) all service matters concerning—
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> (i) a member of any All-India Service; or"

Clause (q) of Section 3 of the Act, 1985 defines service matters as under:

> "**3(q)** "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation 1[or society] owned or controlled by the Government, as respects—
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> (i) remuneration (including allowances), pension and other retirement benefits;
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> (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
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> (iii) leave of any kind;
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> (iv) disciplinary matters; or
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> (v) any other matter whatsoever;"

Section 28 which professed to exclude the jurisdiction of all Courts except the Supreme Court under Article 136 of the Constitution reads as under:

> **"28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution.**— On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, 4[no court except—
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> (a) the Supreme Court; or

> (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,
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> shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

Section 33 of the Act provides that the provisions of the Act, 1985 shall have overriding effect over any other law for the time in force.

15. In the context of the aforesaid provisions, especially the professed intent of the legislature to exclude the jurisdiction of the High Courts, in the case of ***L. Chandra Kumar*** (supra), the Seven Judge Bench of the Supreme Court considered, *inter alia,* the question as to whether the exclusion of the jurisdiction of Courts except the Supreme Court under Article 136, runs counter to the power of judicial review conferred on the High Court under Article 226/227 and on the Supreme Court under Article 32 of the Constitution. The Supreme Court after an elaborate analysis of the constitutional provisions and precedents summarised the conclusions as under:

> "**93**. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such

decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

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99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the

> concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."
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> (emphasis supplied)

16. In the context of the controversy at hand, it would be imperative to note that the Supreme Court has exposited in clear and explicit terms that the Tribunals will continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. The Supreme Court took care to further clarify the import of this proposition to mean that it will not be open for the litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation, except in cases where the vires of the legislation under which the particular Tribunal is created is challenged, by overlooking the jurisdiction of the Tribunal concerned. The Supreme Court further ruled that all decisions of the Tribunals will, however, be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.

17. In the light of the aforesaid enunciation, the position which emerges is that under the scheme of the Act, 1985, if a matter is amenable to the jurisdiction of the Administrative Tribunal, then only the said Tribunal has exclusive jurisdiction as a Court of first instance. The Tribunal is within its right in

testing the constitutional validity of statutory provisions and rules, under which the action impugned before it is taken. The orders of the Tribunal are undoubtedly subject to judicial review by the High Court. This does not, however, imply that the High Court can usurp the jurisdiction vested in the Tribunal as an adjudicating authority of the first instance. The observations of the Supreme Court that it is not open for the litigant to directly approach the High Court even in cases where the vires of statutory legislation is challenged, by overlooking the jurisdiction of the Tribunal concerned, takes the matter beyond the pale of controversy. If the vires of statutory legislation and rules can be legitimately challenged before the Administrative Tribunal, a *fortiorari* the challenge to an action which pertains to a service matter must be laid first before the Administrative Tribunal.

18. We find considerable substance in the submissions of Mr. Khambata and Mr. Seervai that the question is not merely of the existence of an alternate remedy. The principles which govern the exercise of extraordinary writ jurisdiction, despite the existence of an alternate remedy, are well recognized. In our view, in the case of availability of remedy under the Act, 1985, in the light of the judicial interpretation put on the relevant

provisions in the Constitution Bench judgment in the case of ***L. Chandra Kumar*** (supra), the issue of justifiability of the very resort to the writ jurisdiction Article 226 comes to the fore.

19. Post ***L. Chandra Kumar,*** the Supreme Court has not approved the exercise of jurisdiction by the High Courts where the matter falls within the realm of Tribunals. In the case of ***Kendriya Vidyalaya Sangathan*** (supra) after adverting to the aforesaid pronouncement in the case of ***L. Chandra Kumar*** (supra), the Supreme Court held that the High Court erred in entertaining the writ petitions concerning service matters of employees of Kendriya Vidyalaya as those matters fell under the jurisdiction of the Administrative Tribunal. The observations in paragraphs 12 and 13 are material and hence extracted below:

> "**13**. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only courts of first instance 'in respect of areas of law for which they have been constituted'. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.
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> **14**. In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit bench in the State of Jammu and Kashmir for disposal in accordance with law."
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> (emphasis supplied)

20. A profitable reference can also be made to a judgment of the Supreme Court in the case of ***Rajeev Kumar and another vs. Hemraj Singh Chauhan and others.***[6] In the said case, where the proceedings arose out of the orders passed by the Central Administrative Tribunal and the petitioner therein got themselves employed as intervenors in the proceedings before the High Court, the Supreme Court after referring to the observations in paragraphs 93 and 99 of the judgment in ***L. Chandra Kumar*** (supra), further expounded the import of the Constitution Bench judgment in the following words:

> "**13**. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which C.A.T. has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a Court of first instance in respect of their service disputes, for adjudication of which C.A.T. has been constituted.
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> **16**. The principles laid down in the case of Chandra Kumar (supra) virtually embody a rule of law and in view of Article 141 of the Constitution the same is binding on the High Court. The High Court fell into an error by allowing the appellants to approach it in clear violation of the Constitution Bench judgment of this Court in Chandra Kumar (supra)."
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> (emphasis supplied)

21. The Supreme Court has thus held that the principles laid down in **L. Chandra Kumar** (supra) have ingrained into rule of law and it is not open to the High Courts to entertain the

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6 (2010) 4 Supreme Court Cases 554.

petition pertaining to service matters, which apparently fall within the domain of the Administrative Tribunal, as a Court of first instance.

22. In the light of the aforesaid exposition of law, readverting to the facts of the case, it is imperative to note that the primary and principle grievance of the petitioner is the initiation of action in the form of preliminary inquiries in respect of alleged acts and conduct of the petitioner. The thrust of the submissions on behalf of the petitioner is that those actions are *mala fide* and have been initiated with an object of wreaking vengeance on account of the disclosures made and proceedings initiated by the petitioner. Evidently, the petitioner has made an endeavour to establish the nexus between those actions and the actions initiated against the then Home Minister pursuant to the orders passed by this Court in the backdrop of the allegations made by the petitioner in the letter addressed by the petitioner on 20th March, 2021 to the Hon'ble Chief Minister. However, the substance of the matter cannot be lost sight of. A meaningful reading of the petition and the grievance sought to be agitated by the petitioner would lead to no other inference than that of the petitioner being aggrieved by the initiation of preliminary inquiries against him purportedly for acts and

omission in the performance of his duties as a member of the service and alleged breach of the Service Rules.

23. If we keep in view this centrality of the challenge of the petitioner, the particular grievances sought to be urged on behalf of the petitioner like;

(i) the alleged improper institution of 'preliminary inquiry';

(ii) the alleged fallacy in the exercise to empower the inquiring officer with the powers under Section 32 of the Code;

(iii) the vulnerability of the action on account of proximity of the impugned action to the orders passed by this Court and action initiated against the concerned pursuant thereto;

(iv) the vitiation of the action on account of the alleged role of respondent no.3 in dissuading the petitioner from pursuing actions against the concerned and the resultant *mala fide,*

can only be termed as the barnacles attached to the hull of the controversy. The submission on behalf of the petitioner that the aforesaid factors erode the credibility of the actions initiated against the petitioner and completely vitiate those actions, in

our view, can legitimately be agitated before and adjudicated by the Tribunal. Likewise, the challenge to the subsequent actions of entrusting the inquiries to officers allegedly junior in rank etc. vide order dated 3rd May, 2021, can very well be urged before the Tribunal. It must be borne in mind that it is not the nature of the challenge which is determinant of the amenability of the service matters before the Tribunal. If the impugned action falls within the ambit of "service matters", which is of wide amplitude, it is only the Tribunal, which as a Court of first instance, is empowered to delve into its legality, propriety and correctness.

24. Consistent with the aforesaid view, which we are persuaded to take, we do not propose to delve deep into the controversy on factual score. One aspect however deserves mention. Petitioner alleges that actions were initiated with a view to give a counter-blast to the outcome of the petitions instituted by the petitioner. This claim of the petitioner, *prima facie,* does not hold ground in respect of the action initiated against the petitioner on the basis of the complaint of Mr. Anup Dange. The latter had made complaint against the petitioner on 2nd February, 2021, much before the controversy arose over the explosives scare. Evidently, the impugned order dated 20th

April, 2021 stems from incidents which predate the letter of the petitioner dated 20th March, 2021. We have adverted to this aspect of the matter to underscore the fact that the allegations of malice are also rooted in facts and thus require adjudication by the competent Tribunal.

25. This takes us to the submission on behalf of respondent no.1 State that even if it is assumed that the allegations against the petitioner are made by the persons who are inimically disposed towards the petitioner, that cannot be a ground to quash the action initiated to inquire into those allegations. An analogy was sought to be drawn from the propositions which enunciate that even the criminal prosecution, if otherwise justifiable, does not get vitiated on account of malafides or political vendetta of the first informant.

26. In the case of ***Sheonandan Paswan*** (supra) the Supreme Court, *inter alia,* observed that, "it is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of *mala fide* or political vendetta of the first informant or the complainant." The aforesaid pronouncement was followed with approval in the case of ***Bhajan Lal*** (supra) to hold that if assuming that the complainant has laid the

complaint only on account of his personal animosity that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. Similar observations were made in the cae of ***M. Narayandas*** (supra).

27. There can be no duality of opinion about the aforesaid proposition. However, at this juncture, we are of the view that it may not be appropriate for this Court to delve into the applicability of the aforesaid proposition to the facts of the case at hand. Since we are persuaded to hold that the proper remedy for the petitioner is to invoke the jurisdiction of the Central Administrative Tribunal, before which the petitioner can very well agitate the issues of mala fide and vendetta, we are advised not to observe anything more.

28. The upshot of the aforesaid consideration and reasoning is that the petition is not tenable before this Court as a Court of first instance. We are thus not inclined to entertain the petition.

29. Hence, the following order:

: ORDER :

(i) The petition stands dismissed.

(ii) However, the dismissal of the writ petition will not stand in the way of the petitioner in approaching the

appropriate forum, in accordance with law, if so advised.

(iii) In the event, the petitioner approaches the appropriate forum and the issue of limitation arises for consideration, then the period spent by the petitioner in prosecuting this petition may be excluded from computation.

(iv) By way of abundant caution we deem it necessary to clarify that the consideration is confined to the tenability of the petition and in the event the petitioner approaches the appropriate forum, the proceedings shall be decided by such forum in accordance with law uninfluenced by any of the observations made hereinabove.

(v) In view of the dismissal of the petition, the Interim Application No.1602 of 2021, also stands disposed of.

[N. J. JAMADAR, J.] [S. S. SHINDE, J.]