

Court No. - 40**Case :-** WRIT - A No. - 6014 of 2022**Petitioner :-** Pankaj Dhar Dubey**Respondent :-** Union Of India And 4 Others**Counsel for Petitioner :-** Bashist Tiwari,Rajesh Kumar**Counsel for Respondent :-** A.S.G.I.,Vivek Kumar Singh,A/V0572**Hon'ble Vivek Kumar Birla,J.****Hon'ble Vikas Budhwar,J.**

1. Heard Sri Bashist Tiwari, learned counsel assisted by Sri Rajesh Kumar, learned counsel for the petitioner, Sri Vivek Kumar Singh, who has accepted notice on behalf of the respondent no.1-Union of India.
2. In view of the order which is being proposed to be passed today there is no need to issue notice to the respondent nos.2 to 5.
3. This is a petition under Article 226 of the Constitution of India instituted by the petitioner seeking following reliefs:-

“(i) To issue writ order or direction in the nature of certiorari quashing the impugned order dated 03.12.2021 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad in Civil Misc. Contempt Petition No.330/00070 of 2010, Pankaj Dhar Dubey v. U.C. Dwadas Shreni and Others (Annexure No.1 to the writ petition) arising out of order dated 06.12.2006 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No.509 of 2004, Pankaj Dhar Dubey v. Union of India and Others (Annexure No.9 to the writ petition).

(ii) To issue writ order or direction in the nature of mandamus commanding and directing the respondents to give promotion to the petitioner on the post of Lab Assistant in scale of Rs.530-610/- in pursuance of Railway Board's Letter dated 21.01.1984 (Annexure No.3 to the writ petition)

(iii) To issue writ order or direction in the nature of mandamus directing the Central Administrative Tribunal, Allahabad Bench, Allahabad/respondent No.5 to decide the case by constituting a bench of two judicial members.

(iv) To issue writ order or direction in the nature of declaration declaring Section 46 of the Constitution (Forty-second Amendment) Act, 1976 by which Article 323A has been inserted in

the Constitution of India (Annexure No.15 to the writ petition) and Section 5(2) and 5(4) of the Administrative Tribunals Act, 1985 (Annexure No.16 to the writ petition) as unconstitutional and ultra vires and struck down the same being violative of Articles 50 and 368 of the Constitution of India and against the basic structure of Constitution of India.”

4. On 16.05.2022 following order was passed:-

“On being confronted with the preliminary objection raised by Sri Vivek Kumar Singh, learned counsel appearing for Union of India that the present writ petition against the order dropping the contempt proceedings is not maintainable, Sri Bashist Tiwari, learned counsel for the petitioner although sought to argue on the issue of preliminary objection, however, after some argument he prays that the matter may be adjourned for today and may be listed as fresh after one week so as to enable him to further prepare the matter.

Since this is a nominated matter, therefore, put up this case as fresh on 25th May, 2022, at 2:00 P.M. for which learned counsel for the parties have agreed.

It is made clear that in case learned counsel for the parties are not present, this Court shall proceed to consider and decide the matter on merits.”

5. Perusal of the reliefs as sought in the present writ petition it will reveal that the petitioner has insisted that this Court may issue a writ, order or direction in the nature of certiorari quashing the order dated 03.12.2021, passed by Central Administrative Tribunal, Allahabad Bench, Allahabad (5th Respondent) in Civil Misc. Contempt Petition No.330/00070 of 2010 in Original Application No.330/00509 of 2004 (Pankaj Dhar Dubey vs. U.C. Dwadas Shreni and two Others) whereby the contempt petition so preferred by the petitioner herein was consigned to record and the notices were discharged on the ground that there had been no willful disobedience on the part of the alleged contemnors, who were joined as opposite parties in the above noted contempt petition. Further relief is also being sought directing the respondents herein to give promotion to the petitioner on the post of Lab Assistant in the pay scale of Rs.530-610/- in pursuance of the Railway Board's Letter dated 21.01.1984 and to further declare Section 46 of the Constitution of India (42nd Amendment) Act, 1976 by which Article 323A has been inserted in the Constitution of India and Sections 5(2) and 5(4) of the Administrative Tribunals Act, 1985 as unconstitutional, ultra vires and struck down the

same being violative of Articles 50 and 368 of the Constitution of India.

6. Factual matrix of the case as worded in the present writ petition are that the petitioner claims himself to be engaged as Substitute Science Bearer in the pay scale of Rs.2550-3200/- by virtue of the order dated 25.01.2000 passed by the Assistant Personnel Officer, Headquarters, North Eastern Railway, Gorakhpur. Alleging disparity and differential treatment the petitioner filed Original Suit No.1136 of 2003, Pankaj Dhar Dubey vs. Union of India and Others, before the Central Administrative Tribunal, Allahabad Bench, Allahabad (5th respondent) seeking a direction to be promoted as Lab Assistant in the pay scale of Rs.530-610/-(pre-revised) in pursuance of the Railway Board's Letter dated 21.01.1984. The Original Application so preferred by the petitioner herein came to be decided by the 5th respondent by virtue of the order dated 23.09.2003 while granting liberty to the petitioner to file a fresh representation raising his grievances and the same was directed to be considered by the Railways. The petitioner has further come up with the case that on 17.12.2004 the petitioner was granted temporary status with effect from 23.05.2000 and by virtue of the order dated 28.02.2005 the petitioner was posted as Chaukidar in the pay scale of Rs.2500-3200/- in the Telecommunication Department of Railways.

7. The petitioner herein has further averred that he had instituted Original Application No.509 of 2004 before the 5th respondent being Pankaj Dhar Dubey vs. Union of India and Others seeking following reliefs:-

“(i) To issue an order or direction setting aside the order dated 22.12.2003 passed by C.P. Office, N.E. Railway, Gorakhpur.

(ii) To issue an order or direction commanding the respondents to give promotion to the applicant as Lab Assistant in the scale of Rs.530-610/- in pursuance of Railway Board's letter dated 21.01.1984 after regularizing the applicant in scale of Rs.2550-3200 in Boys Inter College, N.E. Railway, Gorakhpur.

(iii) To issue an order or direction commanding the respondents to give seniority, arrears of salary for difference of pay for the post of Science Bearer and Lab Assistant after completion of one year service from the date of his appointment excluding four months' period.”

8. Record reveals that the Original Application No. 509 of 2004 so instituted by the petitioner herein came to be disposed of by Central Administrative Tribunal, Allahabad Bench, Allahabad on 06.12.2006 with the following directions:-

“8. In the result, the O.A. Is finally disposed of with a direction to the respondents to consider the case of the applicant for promotion to the post of Lab Assistant in the School run by the N.E.R., if there is vacancy and if the applicant is otherwise found suitable under the relevant Rules within a period of six months from the date of certified copy of this order is produced before them. The order dated 22.12.2003 (Annexure-1) is rendered ineffective and will not come in the way of such consideration for promotion. No order as to costs.”

9. The petitioner herein has further averred in paragraph 13 of the writ petition that a review application was preferred by the Railways against the order dated 06.12.2006, which was dismissed by the 5th respondent on 10.12.2007 as time barred. The records further reveal that the Railways preferred Writ Petition No.16050/2008 which was dismissed on 27.03.2008. The operative portion of the order is being quoted herein as under:-

"1. Contesting respondent, Pankaj Dhar Dubey, was appointed on casual basis by the petitioners. He filed an Original Application No. 1136 of 2003 before the Central Administrative Tribunal, Allahabad Bench, Allahabad for his regularization. This was disposed of on 23rd day of September, 2003 directing the petitioners to decide the case of contesting respondent. Petitioners rejected the case of contesting respondent for regularization by the order dated 22nd December, 2003. Contesting respondent filed another Original Application No. 509 of 2004 challenging the order dated 22nd December, 2003, wherein he prayed that he should be regularized as well as promoted to the post of Lab Assistant. During the pendency of the said application, contesting respondent was regularized on Group D post. The Central Administrative Tribunal by its order dated 6th day of December, 2006 has directed the petitioners to reconsider the promotion of contesting respondent. Hence this writ petition.

2. We have hear learned counsel for the petitioners and Sri Bashist Tiwari, learned counsel for the contesting respondent.

3. Learned Central Administrative Tribunal under the impugned judgment has sent back the matter to the petitioners for reconsider of the case of the contesting respondent for promotion. Needless to add, this consideration has to be done in accordance with law.

4. In view of the aforesaid, we see no justification to interfere in the matter.

5. This writ petition is dismissed with the aforesaid observations."

10. In the meantime, it appears that a contempt petition was also instituted by the petitioner herein in which the following order was passed:-

"1. Sri A.V. Srivastava, learned counsel for the respondents has stated at the outset that he has filed Review Application prior to filing of Review Application against the order passed in Original Application. Sri B. Tiwari, learned counsel for the applicant states that the said Review Application has been dismissed on the ground of limitation and as such the order of this Tribunal ought to have been complied by the respondents in true spirit.

2. Having heard the counsel for the parties, we are satisfied that ends of justice would be met if the respondents are directed to ensure the compliance of the order of this Tribunal passed in the O.A. within a period of three months from the date of receipt of a certified copy of this order. In case the compliance is not done within three months, it would be open to the applicant to file fresh contempt petition.

3. In view of the above, the CCP is dismissed. Notices are discharged."

11. Records further reveal that the petitioner herein also instituted an Execution Application under Section 27 of the Administrative Tribunals Act, 1985 for execution of the judgment and the order dated 06.12.2006 in which on 18.11.2009 the following order was passed :-

"1. MA (Execution) No. 12 of 2008 : Heard learned counsel for the parties.

2. Applicant filed OA No. 509 of 2004 praying for direction to set aside order dated 22.12.2003 passed by C.P. Office, N.E. Railway, Gorakhpur, to issue an order/direction commanding the respondents to give promotion to the applicant as Lab. Assistant in the scale of Rs. 530-610/- in pursuance to Railway Board's letter dated 21.1.1984 after regularizing the applicant in scale of Rs. 2550-3200/- in Boys Inter College, N.E. Railway, Gorakhpur and for direction commanding the respondents to give seniority, arrears of salary for difference of pay for the post of 'Science Bearer' and Lab Assistant etc. Tribunal vide order dated 06.12.2006, decided OA No. 509 of 2004. Para 5 and 7 of the Tribunal order dated 6.12.2006 is reproduced below :-

"5. We have considered the respective arguments in the context of the applicant's claim for promotion to the post of Lab Assistant. He appears to be correct on the point that the posts of Lab Assistant were created vide letter dated 6.9.1984 (Annexure-9) of General Manager (P) for Boys High School, Gorakhpur, run by N.E.R. There is no clear cut denial from the side of the respondents of the factum of creation of posts of Lab Assistant. The reply does not say that the said posts were

subsequently abolished or surrendered or kept in abeyance. Though there is such plea in respect of the post of Science Bearer, which the applicant was holding before 20.1.2003. So to the extent the order dated 22.12.2003 (Annexure-1) says that there are no posts of Lab Assistant in the School run by N.E.R. does not appear to be correct.

7. Sri Srivastava may be correct in saying that the casual worker or worker with temporary status before regularization may not be eligible for promotion to the post of Lab Assistant. As on today, the applicant stands regularized in Group 'D' as Chowkidar, but in a different unit named Signal Communication Microwave. The question is as to whether a Group 'D' employees of this unit will be eligible for promotion to the post of Lab Assistant in the school, run by the N.E.R. The letter dated 21.1.1984 alone does not appear to be sufficient to decide the question as it can be construed both ways. No doubt, para 2 of the letter dated 21.1.1984 does not say that such Group 'D' employees should be of Laboratory or of the School run by the N.E.R. Or of a particular unit. But then the Railways is a big organization divided into different division/units so without knowing the detailed scheme for filling up the post of Lab Assistant in the school of N.E.R., it is difficult to pronounce whether regular Group 'D' employee of a unit, different to the unit where such vacancies may exist, will or will not be eligible for such promotion. We leave it to the authorities concerned to decide the same in the light of the relevant Rules on the subject."

3. A statement is made at the bar that the respondents challenged said order by filing Writ Petition in Allahabad High Court which was dismissed; Contempt Petition against respondent has also been dismissed.

4. Present Execution Application has been filed seeking Execution of the order of Tribunal dated 6.12.2006 (referred to above). The applicant has himself filed copy of order dated 25.4.2008 titled 'Speaking Order', communicated through department letter dated 25.04.2008 (Annexure-5 to the Execution Application). The relevant extract of the said order reads :-

".....I find that at present the applicant belongs to Signal and Telecom department whereas the post of Lab Asst. which was earlier belonging to Railway School is not existing at present as such his claim is not considerable."

5. Perusal of the said order shows that observations made in para no. 7 of the Tribunal order (quoted above) have not been taken into account.

6. In view of the above said speaking order dated 25.04.2008 is set aside with direction to the concerned respondent authority to pass fresh orders (within three months of receipt of certified copy of this order) and comply with order of Tribunal dated 21.12.2003 in O.A. No. 509 of 2004.

7. Execution Application No. 12 of 2008 is disposed of subject to above observations."

12. Eventually, by virtue of the order dated 25.04.2008, the matter

pertaining to the promotion of the petitioner was found not in favour of the petitioner herein and accordingly a speaking order was passed by respondent-General Manager North Eastern Railway, Gorakhpur. Thereafter the petitioner herein preferred a Contempt Application No. 70 of 2010 before the 5th Respondent on which on 09.11.2010 notices were issued requiring passing of a conditional order for framing of the charges in case the order passed in Original Application No.509 of 2004 (Pankaj Dhar Dubey vs. Union of India and Others) is not complied with. The said sequence of event occasioned the Railways to prefer Writ-A No.72926 of 2010 (Union of India vs. Pankaj Dhar Dubey and Another) before this Court, which came to be dismissed by this Court on 17.08.2017. The operative portion of the said order is being quoted as under:-

“(23) Further, as observed hereinabove, once the Tribunal itself had issued directions on 22.01.2008 for ensuring the orders for compliance in the contempt to jurisdiction and leaving it open to the respondent no. 1 to file a fresh Contempt Application in the event of non-compliance vide judgment dated 22nd January, 2008, we see no reason over and above the reasons indicated hereinabove as to why the respondent no. 1 could not have filed the Contempt Application when he alleges the order dated 24th February, 2010 to be a contemptuous order which is yet to be examined in the proceedings before the Tribunal.

(24) The Contention raised on merits as to whether the orders of the Tribunal were being capable of complied with or not, is a matter of defence but that by itself cannot be a ground to treat the proceedings initiated under Section 17 to be without jurisdiction or unfounded.

(25) Consequently, for all the aforesaid reasons and the facts in the present case that have emerged, we do not find this to be a case to invoke our extra-ordinary jurisdiction under Article 226 of the Constitution of India or our supervisory jurisdiction under Article 227 thereof so as to preempt the proceedings of contempt on the mere issuance of the notices to the officials of the petitioners.”

13. Now by virtue of the order dated 03.12.2021 passed in Civil Misc. Contempt Petition No.330/00070 of 2010 in Original Application No.330/00509 of 2004 (Pankaj Dhar Dubey vs. U.C. Dwadas Shreni and two Others) the same has been consigned to record and notices so issued to the respondents herein have been discharged.

14. Sri Vivek Kumar Singh, learned counsel for the respondent no.1-

Union of India, at the very outset, has raised a preliminary objection regarding maintainability of the present writ petition before this Court on the ground that the order which is being impugned in the present proceedings is an order discharging the alleged contemnors and not proceeding against them, against which no writ petition under Article 226/227 of the Constitution of India lies before this Court. In order to buttress his submission he has cited the following judgments:-

(A) T. Sudhakar Prasad vs. Government of A.P. And Others, (2001) 1 SCC 516

(B) Service Bench No.1793 of 2013 (Dr. P.V. Jaganmohan vs. Union of India), decided on 30th May, 2014.

(c) Writ Petition (S/B) No.590 of 2018 (Dr. Harish Kumar vs. Dr. S.C. Gairola and Others), decided on 20.12.2018

15. On the other hand, Sri Bashist Tiwari, learned counsel for the petitioner has cited the following judgments in order to substantiate his argument that the writ petition lies before this Court in the proceeding under Article 226/227 of the Constitution of India even against the order wherein the contemnors are discharged:-

(A) L.Chandra Kumar vs. Union of India (1997) 3 SCC 261

(B) T. Sudhakar Prasad (supra)

(c) Delhi Judicial Service Association, Tis Hazari Court, Delhi vs. State of Gujarat and Others (1991) 4 SCC 406

(D) Sujitendra Nath Singh Roy vs. State of West Bengal, 2015 AIR SCW 1833

16. Sri Tiwari, learned counsel for the petitioner has sought to argue that in view of the mandate as contained in the judgment of **L. Chandra Kumar** (supra), this Court in exercise of jurisdiction as envisaged under Article 226/227 of the Constitution of India can entertain not only the writ petition so preferred against the order passed by the Central Administrative Tribunal under Section 17 of the Central Administrative Tribunal Act, 1985 but also punish the contemnors in that regard. According to Sri Tiwari, learned counsel for the petitioner the plenary

powers so attached to Article 226 of the Constitution of India nowhere puts any embargo or restricts the scope of Article 226 of the Constitution of India so as to denude itself from examining the validity of an order passed by the Central Administrative Tribunal when the Central Administrative Tribunal abstains itself from exercising the powers as conferred under Section 17 of the Administrative Tribunal Act, 1985. Sri Tiwari has further argued that the power so conferred under Article 226/227 of the Constitution of India cannot be negated or circumscribed even by a constitutional amendment as the High Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India can eliminate the contingency of any injustice/illegality so sought to be committed therein and the power of judicial superintendence is always available with it.

17. Sri Tiwari, learned counsel for the petitioner has further drawn the attention of the Court towards the judgment of **T. Sudhakar Prasad** (supra) so as to further contend that in the matter of exercise of contempt jurisdiction, if any material irregularity is being committed by the Central Administrative Tribunal then it can be always put to naught and the same can obviously be rectified at the stage of the proceedings under Article 226/227 of the Constitution of India. In nutshell, the submission of the learned counsel for the petitioner is to the extent that the writ petition is maintainable before this Court in case of any order so passed by the Central Administrative Tribunal denuding the exercise of contempt jurisdiction.

18. Sri Vivek Kumar Singh, learned counsel for the Union of India has argued that now the issue with regard to the maintainability of the proceedings under Article 226/227 of the Constitution of India against the orders discharging the contemnors and not proceeding against them is no more res integra as in view of the judgments of the Hon'ble Apex Court in **T. Sudhakar Prasad** (supra) as well as in the case of **Dr. P.V. Jagannohan** (supra) and **Dr. Harish Kumar** (supra), the writ petition does not lie before this Court against the order whereby notices are

discharged and the contempt proceedings are dropped by the Central Administrative Tribunal.

19. We have carefully considered the submissions so made by the learned counsel for the parties and have perused the records and we find that the present case does not necessitate the occasion to seek response from the respondents and with the consent of the learned counsel for the parties the present petition is being decided accordingly.

20. The Parliament of India in exercise of powers so conferred therein in order to provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with affairs of Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of [any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution] and for matters connected therewith or incidental thereto enacted an Act by the name and nomenclature of the Administrative Tribunals Act, 1985. Section 17 which deals with the provisions pertaining to contempt which is being quoted in extenso:-

*“17. **Power to punish for contempt.**—A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that—*

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the Advocate-General in section 15 of the said Act shall be construed,—

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint

Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.”

21. As a matter of fact the Parliament has also enacted an Act by the name and nomenclature of the Contempt of Courts Act, 1971, which also contains various provisions pertaining to initiation of contempt proceedings and culminating them to its terminus point. The issue with regard to the different facet of the Central Administrative Tribunal Act, qua its establishment, constitution and its jurisdiction was subject matter of challenge before the Hon'ble Apex Court in the case of **L. Chandra Kumar** (supra) wherein the Constitution Bench of the Hon'ble Apex Court in paragraph nos.90, 93, 94, 95, 96, 97, 98 and 99 has observed as under:-

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

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 setup, 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 concerned Tribunal.

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

95. We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the administrative members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times, IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass- roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to

which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases.

96. It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We are, however, of the view that this may not be the best way of solving the problem. We do not think that our constitutional scheme requires that all adjudicatory bodies which fall within the territorial jurisdiction of the High Courts should be subject to their supervisory jurisdiction. If the idea is to divest the High Courts of their onerous burdens, then adding to their supervisory functions cannot, in any manner, be of assistance to them. The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by Parliamentary legislations, there is no uniformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.

97. The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of experts bodies like the LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department.

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

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of [Article 323A](#) and Clause 3(d) of [Article 323B](#), to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. [Section 28](#) of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of [Articles 323A](#) and [323B](#) would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under [Article 32](#) of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under [Article 323A](#) and [Article 323B](#) of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. [Section 5\(6\)](#) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

22. Yet in the case of **T. Sudhakar Prasad** (supra) the Hon'ble Apex Court had the occasion to consider the proceedings relating to contempt jurisdiction of the Central Administrative Tribunal, wherein the Hon'ble Apex Court in paragraph nos.16 and 17 has observed as under:-

“16. The Constitution Bench invoked the doctrine of prospective overruling and made its directions to come into effect prospectively, i.e., from the date of its judgment.

17. It is thus clear that the Constitution Bench has not declared the provisions of Article 323-A (2)(b) or Article 323-B(3)(d) or Section 17 of the Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like courts of first instance and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to court or tribunals subordinate to High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to High Court or to file a complaint under Section 193, 219 and 228 of IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of Supreme Court Bar Association (supra) or L. Chandra Kumar (supra) or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of High Court on specified matters, did not amount to assigning tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any Court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers the Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on administrative tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity therefrom. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction power and authority to hear and decide the matters covered by sub-section (1) of Section 14 of the Act having been conferred on the administrative tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of tribunals if those matters would have continued to be heard by the High court has now been conferred on the administrative tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly,

because the Tribunals are not courts of record. While holding the proceedings under Section 17 of the Act the tribunal remains a tribunal and so would be amenable to jurisdiction of High Court under Article 226/227 of the Constitution subject to the well-established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the tribunals. However any order or decision of tribunal punishing for contempt shall be appealable only to the Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in Section 19 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. Section 17 of Administrative Tribunals Act is a piece of legislation by reference. The provisions of Contempt of Courts Act are not as if lifted and incorporated in the text of Administrative Tribunals Act (as is in the case of legislation by incorporation); they remain there where they are yet while reading the provisions of Contempt of Courts Act in the context of Tribunals, the same will be so read as to read the word Tribunal in place of the word High Court wherever it occurs, subject to the modifications set out in Section 17 of the Administrative Tribunals Act. Section 19 of the Contempt of Courts Act, 1971 provides for appeals. In its text also by virtue of Section 17 of the Administrative Tribunals Act, 1985 the word High Court shall be read as Tribunal. Here, by way of abundant caution, we make it clear that the concept of intra-tribunal appeals i.e. appeal from an order or decision of a member of a Tribunal sitting singly to a bench of not less than two members of the Tribunal is alien to the Administrative Tribunals Act, 1985. The question of any order made under the provisions of the Contempt of Courts Act, 1971 by a member of the Tribunal sitting singly, if the rules of business framed by the Tribunal or the appropriate government permit such hearing, being subjected to an appeal before a Bench of two or more members of Tribunal therefore does not arise. Any order or decision of the Tribunal punishing for contempt is appealable under Section 19 of the Act to the Supreme Court only. The Supreme Court in the case of L. Chandra Kumar has nowhere said that orders of tribunal holding the contemnor guilty and punishing for contempt shall also be subject to judicial scrutiny of High Court under Article 226/227 of the Constitution in spite of remedy of statutory appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by Administrative Tribunal on matters covered by Section 14 (1) of Administrative Tribunals Act and orders punishing for contempt under section 19 of the Contempt of Courts Act read with Section 17 of Administrative Tribunals Act, is this : as against the former there is no remedy of appeal statutorily provided, but as against the later statutory remedy of appeal is provided by Section 19 of Contempt of Courts Act itself.”

23. Notably a Division Bench of this Court sitting at Lucknow had the occasion to consider the issue regarding the maintainability of writ proceedings under Article 226/227 of the Constitution of India in the matters wherein challenge was laid to the orders whereby the Central Administrative Tribunal did not proceed with the contempt and

discharged the contemnors despite the allegations of the applicant therein that the orders put to compliance were not complied with.

24. In the case of **Dr. P.V. Jaganmohan** (supra) the Division Bench of this Court has observed as under:-

*".....In **T. Sudhakar Prasad** case (supra), the facts were that a contempt application was moved invoking the contempt jurisdiction of Andhra Pradesh Administrative Tribunal under Section 17 of the Act seeking initiation of proceedings against the Principal Secretary, Irrigation and CAD Department, alleging therein that there was willful disobedience by the contemner of an order passed by the Tribunal in favour of the applicant. The Tribunal initiated the proceedings. The State of Andhra Pradesh and the Principal Secretary filed a writ petition (CWP No. 34841 of 1997) in the High Court of Andhra Pradesh laying challenge to the jurisdiction of the Tribunal to take cognizance of the contempt case. In another matter, an application was also moved invoking contempt jurisdiction of the High Court, without approaching the Tribunal under Section 17 of the Act, and complaining of willful disobedience of an order passed by the Andhra Pradesh Administrative Tribunal. In both the matters, question arose as to whether such proceedings were appropriately maintainable before the High Court or the Administrative Tribunal. The issue has been disposed of by a Division Bench of the Andhra Pradesh High Court holding therein that in view of the decision rendered by the Supreme Court in **L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577]**, Section 17 of the Administrative Tribunals Act, 1985 does not survive and consequently, the Administrative Tribunals set up under the Administrative Tribunals Act, 1985 cannot exercise the contempt jurisdiction under Section 17 of the said Act, as the same had become non est under law. The contempt proceedings before the Administrative Tribunal are set aside as being devoid of jurisdiction and the applicants were at liberty to initiate contempt proceedings by following the procedure as applicable to the contempt of subordinate courts provided under the provisions of the Contempt of Courts Act, 1971 and the rules framed thereunder by the Andhra Pradesh High Court. In other contempt application, same view was taken. The said order of the High Court was put to challenge before the apex court and the apex court in Para-16 of the said judgment held as under:*

.....

*In the aforesaid case, the apex court found that where the remedy of statutory appeal is provided, the appeal shall lie before the Supreme Court only and a categorical finding has been recorded to the effect that any order or decision of the Tribunal punishing for contempt is appealable under Section 19 of the Act to the Supreme Court only. The reliance placed by the learned counsel for the petitioner upon **T. Sudhakar Prasad** case (supra) is only in respect of the words "while holding the proceedings under Section 17 of the Act the Tribunal remains a Tribunal and so would be amenable to the jurisdiction of the High Court under Articles 226/227 of the Constitution subject to the well-established rules of self-restraint*

governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the Tribunals."

The twin conditions have been taken into consideration and a particular portion of the judgment being relied upon by the counsel for the petitioner is wholly misconceived. Judgment has to be read as a whole and if the judgment is read as a whole, then the only outcome would be that, for punishing for contempt, appeal would be maintainable before the Supreme Court.

*In a later case of **R.Mohajan** (supra), the appellants were not fully implementing the orders, therefore, the Tribunal, vide order dated 23-3-2010, directed for issuance of Rule 8 notice to the contemnors/appellants returnable within two months and directed to list the matter for orders on 3-5-2010. On 30-3-2010, counsel for the contemnors/appellants appeared before the Tribunal and placed on record various documents to show that the orders have been complied with. Not satisfied with the report filed by the Department, the Tribunal passed the order dated 11-6-2010 directing the contemnors/appellants to present before it to receive charges of contempt and adjourned the matter for 30-7-2010. Against the said order, the contemnors preferred an appeal. The apex court taking into consideration **L. Chandra Kumar** case (supra) and **T. Sudhakar Prasad** case (supra), came to the conclusion that the appeal was very much maintainable before the Supreme Court and in Para-9 of the said judgment, it was held as under:*

*"9. In view of the clarification by the three-Judge Bench of this Court in **T. Sudhakar Prasad** (supra), we reject the objection as to the maintainability of the present appeal and hold the same as maintainable."*

So it is clear from the above finding that not only in respect of punishment under the Contempt of Courts Act, but also in respect of interlocutory orders, the appeal has been found to be maintainable by the apex court.

More or less similar question arose before the Supreme Court as to what will be position where a contemner has been discharged from contempt proceedings by the High Court. If the proceedings have been dropped under the Contempt of Courts Act, then whether the appeal would be maintainable before the Division Bench of the High Court as provided under Section 19 of the Contempt of Courts Act or the Special Leave Petition would be maintainable under Article 136 of the Constitution of India.

*In the case of **Mahboob S. Alibhoy** (supra), the facts were that contempt notice was issued and ultimately the proceedings for contempt were dropped against the contemnors. In connection with the said dispute, a notice was issued to the contemnors as to why a complaint be not filed against them under Sections 191, 192, 209 and 210 of the Indian Penal Code. The said order was subjected to challenge before the apex court. The apex court found that no appeal would be maintainable against the order dropping proceeding for contempt or refusing to initiate the proceeding for contempt, which is apparent not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate court may order*

that if the appellant is in confinement, he be released on bail and the appeal be heard notwithstanding that the appellant has not purged his contempt. While considering the maintainability of the appeal, it was held in the following form:

"4.....This Court in the case of Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C., AIR 1974 SC 2255 : (1975) 1 SCR 524, said: ...Where the court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision.

Again in the case of D.N. Taneja v. Bhajan Lal [(1988) 3 SCC 26, it was said: "The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate 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; and*
- (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.*

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.

5. But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and

later dropped or whose petition for initiating contempt proceedings has been dismissed, he is not without any remedy. In appropriate cases he can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of justice."

So the question regarding the maintainability of the writ petition against the discharge of contempt proceedings as held in the above case, the apex court has ruled that the appeal would be maintainable against an order discharging the contemner from contempt proceedings.

*In the case of **Smt. R.S. Sujatha** (supra), the Tribunal issued contempt notice and ultimately convicted the contemner upto the rising of the Court alongwith a fine of Rs.2000/-. The said order was challenged before the Division Bench of Karnataka High Court and the Division Bench of the Karnataka High Court placing reliance upon the case of T. Sudhakar Prasad (supra), came to the conclusion that the appeal would be maintainable before the Supreme Court in such circumstances. In Paragraphs-7 and 8 of the said judgment, the Court held as under:*

"7.The first portion extracted above is relied on by the learned counsel for the petitioner and the second portion is relied on by the respondents. A careful reading of the decision of the Supreme Court makes it clear that once an order is passed by an Administrative Tribunal punishing a party for contempt, the remedy is only by way of appeal to the Supreme Court under Section 19 of Contempt of Courts Act, 1971 and not by seeking judicial review under Article 226/227 of the constitution. The observation that Tribunal would be amenable to the jurisdiction of the High Court under Article 226/227 of the constitution cannot be read in isolation. In fact similar observations are made in CHANDRA KUMAR also. The said observations should be read with the subsequent statement of law. The mere fact that the order imposing punishment for contempt is passed in violation of principles of natural justice or by not following the procedure contemplated under Section 17 of the AT Act read with the CC [CAT] Rules, would not, by itself, mean that instead of filing an appeal, the party aggrieved can challenge the order in a proceedings under Article 226/227 of the Constitution.

8. Though the order dated 19.12.2002 which is under challenge is passed in a proceedings initiated and pending under Section 19 of the AT Act, it is a final order in so far as the proceedings initiated for contempt are concerned. Therefore, it has to be held that an appeal under Section 19 of the Contempt of Courts Act and not a writ petition under Article 226/227 of the Constitution of India is the remedy of the petitioner."

The legal position, which crystallizes from the case laws referred to

hereinabove, is that against an order dropping/discharging contempt proceedings, the appeal would be maintainable before the apex court as it cannot be inferred that where no remedy of statutory appeal is provided, then jurisdiction can be created under Article 226/227 of the Constitution of India before the High Court. The conviction under Section 19 has to be considered in reference to the discharge proceedings and when the discharge order is without a remedy, then there is no provision for intra court appeal before the Tribunal or the rules framed therein.

The reasoning given in Mahboob S. Allibhoy case (supra) applies with full force in the present case, therefore, we hold that the writ petition against the discharge proceedings would not be maintainable and the appropriate remedy to the petitioner is to approach the apex court by way of appeal under Article 136 of the Constitution of India.”

25. Further the High Court of Uttarakhand at Nainital in **Dr. Harish Kumar** (supra) had also the occasion to consider the maintainability of the writ petition wherein the contempt proceedings were dropped initiated from the orders passed by the Central Administrative Tribunal, wherein the Hon'ble Apex Court in paragraph nos.14, 17, 18, 19, 20, 21, 22, 23, 24 and 25 has observed as under:-

“14. In examining this question, it must be borne in mind that a contempt proceeding is not a dispute between two parties. The proceeding is, primarily, between the Court and the person who is alleged to have committed Contempt of Court. The person, who informs the court or brings to its notice that Contempt of such Court has been committed, does not stand in the position of a prosecutor. He simply assists the Court in ensuring that its dignity and majesty is maintained and upheld. It is for the Court which initiates the proceedings to decide, considering the facts and circumstances of the case, whether the person, against whom such proceeding has been initiated, should be punished or discharged [State of Maharashtra vs. Mahboob S. Allibhoy and another[5]]. As the petitioner is merely an informant, who has brought to the notice of the Court that its orders have been violated, he cannot claim to be a person aggrieved by the order passed by the Tribunal discharging the contemnors, and in refusing to punish them on the ground that no case of willful contempt has been made out.

17. A right of appeal is available under Section 19(1) only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. The High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. Article 215 of the Constitution of India does not confer any new jurisdiction or status on the High Courts. It merely recognises that the High Courts are Courts of Record and, by virtue of being Courts of Record, have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rule of procedure excepting principles of natural justice. The jurisdiction contemplated by Article 215 is inalienable. It cannot be taken away

or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Article 215 of the Constitution. The provisions of the Contempt of Courts Act, 1971 cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said Article. (T. Sudhakar Prasad⁶). The High Court exercises its jurisdiction or power, as conferred on it by Article 215 of the Constitution, when it imposes a punishment for contempt. When it decides not to impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to hold that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution. [D.N. Taneja vs. Bhajan Lal⁷; Mahboob S. Allibhoy⁵].

18. On whether an appeal lies against the order of the Tribunal, punishing the respondents for contempt, the Supreme Court, in T. Sudhakar Prasad⁶, observed:

".....It is thus clear that the Constitution Bench has not declared the provisions of Article 323-A(2)(b) or Article 323-B(3) (d) or Section 17 of the Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like 'courts of first instance' and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to court or Tribunals sub-ordinate to High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to High Court or to file a complaint under Sections 193, 219 and 228 of IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of Supreme Court Bar Association vs. Union of India, (1998) 4 SCC 409, or L. Chandra Kumar, (1997) 3 SCC 261 or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of High Court on specified matters, did not amount to assigning Tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any Court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323- A specifically empowers the Parliament to enact a law specifying the jurisdiction and powers, including the

power to punish for contempt, being conferred on Administrative Tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity therefrom. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdictional power and authority to hear and decide the matters covered by Sub-section (1) of Section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of Tribunals if those matters would have continued to be heard by the High Court has now been conferred on the Administrative Tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not "courts of record". While holding the proceedings under Section

17 of the Act the Tribunal remains a Tribunal and so would be amenable to jurisdiction of High Court under Articles 226/227 of the Constitution subject to the well- established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the Tribunals. However any order or decision of Tribunal punishing for contempt shall be appealable only to the Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in Section 19 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985....."

19. The Supreme Court, in *L. Chandra Kumar vs. Union of India & others*[8], has nowhere said that orders of Tribunals holding the contemnor guilty and punishing for contempt shall also be subjected to judicial scrutiny of the High Court under Article 226/227 of the Constitution, inspite of the remedy of a statutory appeal being available. The distinction between orders passed by Administrative Tribunal on matters covered by Section 14(1) of the 1985 Act and orders punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of 1985 Act is this: as against the former there is no remedy of appeal statutorily provided, but as against the latter, a statutory remedy of appeal is provided by Section 19 of the Contempt of Courts Act itself. Any order or decision of the Tribunal punishing for contempt is appealable, under Section 19 of the Contempt of Courts Act , only to the Supreme Court. [*T. Sudhakar Prasad*6; *R. Mohajan and others vs. Shefali Sengupta and others*[9]]

20. That no appeal is maintainable against an order dropping proceeding for contempt, or in refusing to initiate a proceeding for contempt, is apparent from sub section (1) of Section 19 (*Mahboob S. Allibhoy*5). Where the Court declines to initiate proceedings for contempt, it refuses to assume or exercise jurisdiction to punish for contempt, and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of

Section 19 (l), and no appeal would lie against it as of right under that provision. [*Baradakanta Mishra vs. Mr. Justice Gatikrushna Misra C.J. of the Orissa H.C.*[10]; *Mahboob S. Allibhoy*5]. When the finding is that the alleged contemnor did not wilfully disobey the order, there is no order punishing the respondent for violation of the order; and, accordingly, an appeal under Section 19 would not lie. [*J.S. Parihar vs. Ganpat Duggar & others*[11]]. While an appeal would lie to the Supreme Court, against the order of the Tribunal exercising its jurisdiction to punish for contempt, no appeal would lie against the order of the Tribunal refusing to exercise jurisdiction to punish for contempt.

21. While it is clear that no appeal would lie against the order passed by the Administrative Tribunal refusing to punish the respondents/contemnors in the exercise of its jurisdiction under Section 17 of the 1985 Act (which confers on them the power of contempt akin to the High Court), the petitioners would contend that, since the power of judicial review exercised by this Court under Article 226 of the Constitution of India is a part of the basic structure of the Constitution, the provisions of the Contempt of Courts Act or Section 17 of the 1985 Act would not come in its way to set aside the order passed by the Administrative Tribunal refusing to punish the respondents/contemnors for contempt.

22. Subordination of Tribunals and Courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is judicial superintendence and not administrative superintendence, such as the one which vests in the High Court under Article 235 of the Constitution over subordinate courts. In *L. Chandra Kumar*⁸, the Constitution Bench did not agree with the suggestion that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as the Constitutional scheme does not require that all adjudicatory bodies, which fall within the territorial jurisdiction of a High Court, should be subject to its supervisory jurisdiction, i.e. the supervision of the administrative functioning of the Tribunals. (*T. Sudhakar Prasad*⁶)

23. Administrative Tribunals are alternative institutional mechanisms designed to be no less effective than the High Court, but, at the same time, not to negate the judicial review jurisdiction of Constitutional Courts. The Administrative Tribunals are not assigned a status equivalent to that of the High Court and, for the purpose of judicial review or judicial superintendence, they are subordinate to the High Court. High Courts are creatures of the Constitution, and their Judges hold constitutional office having been appointed under the Constitution. The Tribunals are creatures of statute and their members are statutorily appointed and hold a statutory office. [*T. Sudhakar Prasad*⁶; *State of Orissa vs. Bhagaban Sarangi*[12]]. There is no anathema in the Tribunal exercising jurisdiction of the High Court and in that sense being supplemental or additional to the High Court, but at the same time not enjoying a status equivalent to the High Court, and also being subject to judicial review and judicial superintendence of the High Court. (*T. Sudhakar Prasad*⁶).

24. While the powers of the High Court under Articles 226 and 227

of the Constitution of India are, no doubt, a part of the basic structure of the Constitution of India (L. Chandra Kumar⁸), and such a power cannot be negated or circumscribed even by a constitutional amendment let alone legislation - plenary or subordinate, the distinction between existence of the power and its exercise must be borne in mind. The mere existence of a power does not justify the exercise of the power. [Rattan Bai and another vs. Ram Dass and others^[13]]. While the powers of judicial review conferred on the High Court under Article 226 of the Constitution of India, and the power of judicial superintendence conferred on it under Article 227 of the Constitution of India are, no doubt, extremely wide, its exercise is hedged by self imposed limitations. The High Court would not exercise its power of judicial review akin to that of an appellate Court to hear and adjudicate the writ petition on its merits. In the exercise of its powers of judicial review, the High Court would not substitute its views for that of the Administrative Tribunal to come to a different conclusion or to examine the order on its merits, and hold that the Administrative Tribunal had erred in not punishing the respondents-contemnors. In the exercise of its jurisdiction, under Article 226/227 of the Constitution of India, the High Court would also not take upon itself the task of imposing punishment itself or to direct the Tribunal to do so.

25. Ordinarily the High Court, in the exercise of its powers of judicial review under Article 226 of the Constitution of India and its power of judicial superintendence under Article 227 of the Constitution of India, would not interfere with the order of the Tribunal, passed in the exercise of its contempt jurisdiction under Section 17 of the 1985 Act, discharging the contemnors after holding that no case of willful contempt was made out against the respondents.”

26. Much reliance has been placed upon by the learned counsel for the petitioner upon the judgment in the case of **L.Chandra Kumar** (supra) so as to contend that this Court can exercise the jurisdiction under Article 226/227 of the Constitution of India as there is no fetter to restrict the exercise of the powers under preliminary jurisdiction. However, this Court finds that the judgment in the case of the **L.Chandra Kumar** (supra) did not deal with the issue regarding maintainability of writ proceedings against the order passed by Central Administrative Tribunal in the contempt jurisdiction whereby the contempt proceedings were closed and the notices were discharged.

27. So far as the reliance and reference so placed upon by the learned counsel for the petitioner in the case of **Sujitendra Nath Singh** (supra) is concerned, the same is with respect to West Bengal Land Reforms and Tenancy Tribunal refusing to initiate contempt proceedings. More so, the

judgment in the case of **Delhi Judicial Service Association, Tis Hazari Court, Delhi** (supra) is also not applicable as the said judgment does not deal with the provisions of the Contempt of Courts, 1971.

28. Analysis of the judgment of this Court in the case of **Dr. P.V. Jagannohan** (supra) will reveal that this Court has mandated that writ petition challenging the order passed by Central Administrative Tribunal dropping the contempt proceedings and discharging the notice is not amenable to the jurisdiction under Article 226 of the Constitution and further in the case of **Dr. Harish Kumar** (supra) a Division Bench of the Hon'ble High Court at Uttarakhand had opined that ordinarily High Court in exercise of the powers of judicial review under Article 226 of the Constitution of India as well as the powers so conferred under Article 227 of the Constitution of India possessing judicial superintendence would not interfere with an order passed by the Central Administrative Tribunal in exercise of its contempt jurisdiction under Section 17 of the Central Administrative Tribunals Act while discharging the contemnors after holding that no case of of willful contempt is made out, however, this Court is proceeding to make analysis of the issue with regard to the fact whether the Tribunal was justified in dropping the charges and discharging the contemnors or not.

29. This Court finds that the order passed in Original Application No.509 of 2004 by the 5th Respondent on 06.12.2006 as extracted above reveals that the original application so preferred by the petitioner herein was disposed of with the direction to the official respondents to consider the case of the petitioner for promotion to the post of Lab Assistant in the School run by N.E.R. if there is any vacancy and if the petitioner herein is found suitable under the relevant Rules, within a period of six months from the date of a certified copy is produced before them and the order so negating the claim of the petitioner dated 22.12.2003 was rendered in effective and was directed not to come in the way of consideration of the claim of the petitioner for promotion. Meaning thereby that the order itself was conditional, however, subject to two essential conditions (a)

existence of vacancy (b) suitability of the petitioner under relevant Rules. The order passed by the Contempt Court on 03.12.2021 which is subject matter of challenge before this Court records a specific stand taken by the respondents on the basis of an additional affidavit dated 13.05.2019 that there is no vacancy of Lab Assistant existing with the school run by N.E.R. It has also been recited in the order under challenge that vide order dated 07.11.2017, the petitioner herein has been posted from the post of Chaukidar under Divisional Signal and Telecommunication Engineer/N.E.R./Gorakhpur to Lab Attendant, Level-1 (Grade Pay 1800) in the North Eastern Girls Inter College, Gorakhpur and an order has been passed entitling him financial up-gradation which was due on 24.05.2000 and making admissible to MACPs. The factual position so recited in the order dated 03.12.2021 under challenge has not been disputed by the petitioner and the affidavit so mentioned therein have also not been annexed with the writ petition. More so though allegation has been made in the petition with regard to the fact that there are various posts lying vacant for consideration of the claim of the petitioner for promotion to Lab Assistant while referring to Annexure-14, at page 130 which happens to be the composition of the Railway School Staff but this Court finds inability to even go to the said question particularly in absence of any specific documents as well as the affidavits so filed before the Tribunal. Nonetheless this Court in the case of ***Santosh Kumar Srivastava vs. The Managing Director, U.P. Rajiya Nirman Nigam Ltd. And others, reported in [(2001) 1 UPLBEC 642]*** has held in paragraphs 10 to 17 as under:-

“10. In spite of my anxious consideration, I am not persuaded with the contention for the reason that the direction of this Court was two-fold, firstly to declare the result and secondly to consider their cases for appointment in accordance with law keeping in view the vacancy position. First part of direction has been complied with by declaring the result and, therefore, now the controversy centres round to the second part only. The second part of the order is clear and admits only one interpretation, that to consider them for appointment provided there is vacancy. The order of the Division Bench is "to consider their cases for appointment in accordance with law keeping in view the vacancy position". Therefore, in the absence of vacancy, they are not required to be considered. In other words, consideration of their claim

for appointment in the event of their being declared successful, is dependent on the availability of the posts. Respondents in their counter-affidavit have disclosed the existing number of sanctioned posts of Sub-Engineers and the number of Sub-Engineers who are already working in the **Nigam** (Corporation). It appears that due to financial constraint, the **Nigam** with the approval of the State Government decided to down size their strength. Consequently, they reduced the posts of Sub-Engineers from 443 to 330. Therefore, the second part of the direction being dependent on the vacancy position, in the absence of any vacancy, was not possible to be carried out and therefore, in the facts and circumstances, it cannot be held that it amounts to deliberate defiance of this Court's order. Respondents have given detailed explanation in their affidavit, which, in my opinion, is convincing and sufficient.

11. It is settled legal position that a selected candidate has no right to the post and he cannot claim appointment as a matter of right but he is only entitled to be considered. In the case in hand, in view of the fact that there was no vacancy and the **Nigam** has decided not to make any appointment unless the surplus employees are adjusted against the vacancies, in my opinion, it could not be held that the respondents have wilfully flouted the order of this Court. The authorities cited by the learned counsel for the petitioner are also of no help as in the case of *Jatinder Kumar and others v. State of Punjab*, (supra), the Apex Court has held that a selected candidate has no right to be appointed which could be enforced by mandamus. Similar view was taken in the case of *State of Bihar v. Secretariat Assistant Successful Examinees Union*, (supra), wherein the Apex Court has quashed that part of the order of the High Court wherein mandamus was issued to make appointment.

12. During the course of submission, Mr. Hajela, learned counsel sought to argue that there was a clear direction of the Division Bench to consider the petitioner against the existing vacancy for appointment. I am afraid such interpretation, if accepted, will amount to restore that part of the judgment of the learned single Judge which has been quashed by the Division Bench. The learned single Judge vide order dated 21.5.1992 directed the **Nigam** to declare the result of the petitioners within a period of two weeks from the date of filing of the certified copy of the order and in case, they have qualified, the letter of appointment may be issued in their favour within a period of one month from the date of publication of the result. The Division Bench, on appeal, by the **Nigam** quashed the second part of the order directing to appoint the petitioners in view of the settled legal position that such a direction could not be appropriately issued.

13. In a contempt proceeding, it is to be seen as to whether there is any wilful disobedience or not and if such wilful disobedience is found to be on account of compelling circumstances, the contemner may not be held liable for contempt.

14. In the case of *Dushyant Somal v. Sushma Somal*, AIR 1981 SC 1026, the Hon'ble Supreme Court observed as under :

"Nor is a person to be punished for contempt of court for disobeying an order of Court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in

contempt is able to place before the Court sufficient material to conclude that it is impossible to obey the order, the Court will not be justified in punishing the alleged contemnor."

15. In the case of Niaz Mohammad and **others** v. State of Haryana and **others**, the Apex Court has observed as under:

*"9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment decree, direction, order, writ or **other** process of a Court...." Where the contempt consists in failure to comply with or carry out an order of a Court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or **other** process of a Court. Before a contemner is punished for non-compliance of the direction of a Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the Court to execute the decree whatever may be the consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the Court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner."*

16. Therefore, before holding guilty for the alleged defiance of the order, the Court is required to take into consideration all facts and

circumstances of a particular case and has to be satisfied that such disobedience is wilful, deliberate and intentional before punishing the contemner under the Contempt of Courts Act. If, however, it is found that there is disobedience but such disobedience is on account of some compelling circumstances under which it is impossible for the contemner to comply with the order, the contemner may not be punished. In the case in hand, as noticed earlier, there was only direction to consider the petitioner for appointment in accordance with law keeping in view the vacancy position. In the absence of any vacancy, there is no occasion to consider the petitioner for appointment and, therefore, no part of the order of this Court can be said to have flouted by the respondent-contemner.

17. Having heard learned counsel for the parties at length and having regard to all the facts and circumstances of the case, in my opinion, there is no wilful disobedience on the part of the respondents by not considering their claim for appointment in view of the fact that no vacancy exists. In such a circumstance, it cannot be held that the respondents have wilfully disobeyed the order of this Court and as such liable to be punished for committing contempt of this Court.”

30. Yet the Hon'ble Apex Court in the case of ***Kapildeo Prasad Sah and Others vs. State of Bihar reported in (1999) 7 SCC 569*** had the occasioned to consider the contingency wherein the dispute has arisen with regard to the existence of vacancy, which is coming as a hurdle for granting benefit and the Hon'ble Supreme Court in paragraph 10 to 12 has observed as under:-

“10. In his famous passage, Lord Diplock in Attorney General vs. Times Newspapers Ltd. [(1973) 3 All ER 54] said that there is also

"an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity". Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.

11. No person can defy court's order. Wilful would exclude casual, accidental bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of court's order must allege deliberate or contumacious disobedience of the court's order.

12. Nothing has been shown that the claim of the respondents that appellants have not been appointed against any vacancy existing on January 1, 1992 is not true or that the respondents are intentionally or deliberately advancing this plea to deprive the appellants of their right to the arrears of the salary for some ulterior motive. That being so, it was not a case where proceedings for contempt could have been initiated against the respondents. High Court is right in dismissing the

contempt petition. However, since there is a serious dispute whether any vacancy existed or not as on January 1, 1992 against which appellants or anyone of them could have been appointed the matter certainly needs examination but perhaps only by way of an interlocutory application in the writ petition and not by way of contempt. Thus, though upholding the order of the High Court, we send the matter back to the High Court to go into the question if any vacancy existed as on January 1, 1992 and, if so, pass appropriate orders.”

31. The Hon'ble Apex Court in ***Jhaleswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others*** reported in **2002 CRI. L.J. 2935** in para 11 has held as under:-

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. [The Contempt of Courts Act, 1971](#) has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt

proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”

32. In ***Director of Education, Uttaranchal and others vs. Ved Prakash Joshi and Others*** reported in **2005 CRI. L.J. 3731**, it has been held that while dealing with the application for contempt the Court cannot traverse beyond the order non compliance whereof is alleged. It is held:-

“It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside.”

33. Applying the said judgments in the facts of the case the Court finds that this Court cannot enter into the merits of the matter as the same is subject to interpretation which can be done on original side as in contempt jurisdiction the Courts of law has to not only uphold the majesty and dignity of the Courts of law but also lift the veil so as to find out as to whether there was willful disobedience of the orders passed on original side and not to function as an original or appellate court for determination of the dispute *inter se* between the parties.

34. Nonetheless, it is always open for the petitioner herein to take recourse to the provisions contained under Section 19(v) of the Administrative Tribunals Act, 1985 while filing original application before the 5th Respondent challenging the orders negating the claim of the petitioner or depriving the petitioner of his legal and genuine right to be considered for promotion. Even otherwise, from the all four corners of law this Court finds that motion so pressed in service by means of the present writ petition is not even otherwise liable to be entertained under Article 226/227 of the Constitution of India particularly when the order itself was conditional one subject to existence of vacancy and suitability of the petitioner as per the Rules and once the issue with regard to the fact that there remains no vacancy against which the claim of the petitioner would be considered has been raised by the Railways then it

was rightly not interfered by the 5th Respondent in contempt proceedings as the Contempt Court cannot go into the merit of the matter as the remedy lies elsewhere and not in contempt jurisdiction.

35. Though this Court has discussed in detail and proceeded to observe that the present case does not warrant interference under Article 226/227 of the Constitution of India particularly when the contempt proceedings have been dropped and notices have been discharged against the alleged contemnors and this Court finds that there is no occasion even otherwise to take different view from the view so taken by the 5th Respondent, however, the Court finds that a relief has also been sought to challenge 42nd Amendment for declaring The Constitution (Forty-Second Amendment) Act, 1976 being Section 46 pertaining to Tribunals Under Part XIVA whereby Article 323-A was introduced in so far as it pertains to Section 5(2) and 5(4) of the Administrative Tribunals Act, 1985. Section 5(2) and 5(4) of the Administrative Tribunals Act, 1985 reads as under:-

5. Composition of Tribunals and Benches thereof. (1) *Each Tribunal shall consist of 1[a Chairman and such number of Judicial and Administrative Members] as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.*

[(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.]

(4) Notwithstanding anything contained in sub-Section(1), the Chairman--[(a) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Administrative Member, of any other Bench;]

(b) may transfer [a Member] from one Bench to another Bench;

(c) may authorise [the Judicial Member] or the Administrative Member appointed to one Bench to discharge also the functions of [the Judicial Member or the Administrative Member, as the case may be] of another Bench; and]

(d) may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than [two members], issue such general or special orders, as he

may deem fit.

[Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.]”

36. Essentially, while seeking above mentioned relief the petitioner wants a direction in the nature of Mandamus commanding the 5th Respondent to decide the case by constituting a Bench of two members. This Court finds that the issue pertaining to establishment and the constitution of Central Administrative Tribunal had already been decided in the case of **L. Chandra Kumar** (supra) and further in paragraph nos. 97, 98 and 99 (as extracted above) the Hon'ble Apex Court had the occasion to deal with Section 5(2) and 5(4) of the Administrative Tribunals Act, 1985. More so, the petitioner herein as though raised the issue of constitutional validity of the 42nd Amendment Act, 1976 in so far as it pertains to Section 46 which deals with the matter pertaining to Tribunal, however, neither the Union of India nor the respective Secretary to whom the Ministry is to be represented have been made party in the present proceedings. This Court finds that the Union of India through General Manager North Eastern Railway has only been arrayed as a party. Thus in the absence of any impleadment of a proper and necessary party this Court cannot delve into the issue regarding constitutional validity so sought to be raised at the behest of the petitioner. Nonetheless, the Hon'ble Supreme Court in the case of **V.K. Majotra vs. Union of India and Others reported in AIR 2003 SC 3909** in paragraph 8 and 9 have clearly observed as under:-

“8. We have perused the pleadings of the writ petition and the counter affidavits filed by the respondents before the High Court. Counsel for the parties are right in submitting that the point on which the writ petition has been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court. Counsel for the parties are also right in contending that the point raised in the writ petition was neither adverted to nor adjudicated upon by the High Court. It is also correct that vires of [Section 6\(2\)\(b\) \(bb\)](#) and (c) of the Act were not challenged in the writ petition.

The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court Judge or an advocate qualified to be appointed as a Judge of the High Court would be that Sections 6(2)(b)(bb) and (c) of the Act providing for recruitment to the post of Vice-Chairman from amongst the administrative services have been put at naught/obliterated from the statute book without striking them down as no appointment from amongst the categories mentioned in Clauses (b) (bb) and (c) could now be made. So long as Section 6(2)(b)(bb) and (c) remains on the statute book such a direction could not be issued by the High Court. With respect to the learned Judges of the High Court we would say that the learned Judges have over stepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to the notice of the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. We leave the discussion here.

9. We are also in agreement with the submissions made by the counsel for the appellants that the High Court exceeded its jurisdiction in issuing further directions to the Secretary, Law Department, Union of India, the secretary Personnel and Appointment Department, Union of India, the Cabinet Secretary of Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of the CAT and other appropriate authorities that henceforth the appointment to the post of presiding officer of various other Tribunals such as CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc., should be from amongst the judicial members alone. Such a finding could not be recorded without appropriate pleadings and notifying the concerned and affected parties.”

37. Thus taking into aforesaid factual and legal aspect this Court is not delving into the issue regarding challenge to the constitutional provisions so laid in the present petition leaving it open to the petitioner to challenge the same in appropriate proceedings as and when it is occasioned.

38. Accordingly, this Court is of the firm opinion that the present writ petition so preferred by the petitioner challenging the order whereby contempt proceedings has been dropped and notices have been discharged is not liable to be interfered in present proceeding and thus it is liable to be dismissed.

39. Resultantly, it is dismissed.
40. Interim order if any stands discharged.
41. Cost made easy.

Order Date :- 25.5.2022

Nitendra