



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>TH</sup> DAY OF SEPTEMBER, 2019

:PRESENT:

THE HON'BLE MR. JUSTICE L.NARAYANA SWAMY

AND

THE HON'BLE MR. JUSTICE R.DEVDAS

**WRIT PETITION NO.33243 OF 2019 (S-CAT)**

**C/W**

**WRIT PETITION NO.31668 OF 2019 (S-CAT)**

**IN W.P. NO.33243/2019**

**BETWEEN**

1. UNION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF HOUSING AND  
URBAN AFFAIRS  
NIRMAN BHAVAN,  
NEW DELHI - 110 001.
2. CENTRAL PUBLIC WORKS DEPARTMENT  
MINISTRY OF HOUSING AND  
URBAN AFFAIRS,  
NIRMAN BHAVAN,  
NEW DELHI - 110 011  
REPRESENTED BY ITS DIRECTOR GENERAL
3. SRI. PRABHAKAR SINGH  
S/O SRI. SHRIKANT SINGH  
AGED ABOUT 61 YEARS,  
DIRECTOR GENERAL, CPWD  
NIRMAN BHAVAN,  
NEW DELHI - 110 011.

... PETITIONERS

(BY SRI K M NATARAJ, ADDITIONAL SOLICITOR GENERAL  
OF INDIA FOR SRI MADHUKAR M DESHPANDE, ADVOCATE)

**AND**

1. CENTRAL PUBLIC WORKS DEPARTMENT  
ENGINEER ASSOCIATION,  
BENGALURU ZONE  
REPRESENTED BY ITS ZONAL SECRETARY  
SRI.A.MALLIKARJUN REDDY,  
S/O LATE SRI A.VENKATA REDDY  
ASSISTANT ENGINEER,  
O/O EXECUTIVE ENGINEER  
BCD-3, KENDRIYA SADAN,  
C WING, 3RD FLOOR,  
BENGALURU - 560 034.
2. SRI. MANJUNATH R.N.,  
S/O SRI. R. NATARAJAN,  
AGED ABOUT 46 YEARS,  
ASSISTANT ENGINEER,  
O/O EXECUTIVE ENGINEER  
HAL PROJECT DIVISION - I, 4TH FLOOR,  
SH. VISVESVARAYA KENDRIYA BHAWAN  
DOMLUR, NEXT TO CPWD QUARTERS,  
BENGALURU - 560 039.
3. DR. K.B. SURESH  
MEMBER (JUDICIAL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BENGALURU BENCH, 1ST AND 2ND FLOOR  
SH.VISVESVARAYA KENDRIYA BHAWAN  
DOMLUR, NEXT TO CPWD QUARTERS,  
BENGALURU - 560 039.
4. SHRI. C.V. SHANKAR  
MEMBER (ADMINISTRATIVE)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BENGALURU BENCH, 1ST AND 2ND FLOOR,  
SH. VISVESVARAYA KENDRIYA BHAWAN  
DOMLUR, NEXT TO CPWD QUARTERS,  
BENGALURU - 560 039.

... RESPONDENTS

(BY SRI P A KULKARNI, ADVOCATE FOR C/R1 & R2 )

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
& 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET  
ASIDE ORDER DTD:30.7.2019 [ANNEXURE-A] PASSED IN

ORIGINAL APPLICATION TRIBUNAL, BANGALORE BENCH  
AND ETC.

**IN W.P. NO.31668/2019**

**BETWEEN**

1. UNION OF INDIA  
REP BY ITS SECRETARY,  
MINISTRY OF HOUSING AND URBAN AFFAIRS,  
NIRMAN BHAVAN, NEW DELHI 110011
2. CENTRAL PUBLIC WORKS DEPARTMENT  
MINISTRY OF HOUSING AND URBAN AFFAIRS,  
NIRMAN BHAVAN,  
NEW DELHI 110011.  
REP BY ITS DIRECTOR GENERAL
3. SRI. PRABHAKAR SINGH  
S/O. SRI. SHRIKANT SINGH,  
AGED ABOUT 61 YEARS,  
DIRECTOR GENERAL, CPWD,  
NIRMAN BHAVAN,  
NEW DELHI 110011.

... PETITIONERS

(BY SRI K M NATARAJ, ADDITIONAL SOLICITOR GENERAL  
OF INDIA FOR SRI MADHUKAR M DESHPANDE,  
ADVOCATE)

**AND**

1. CENTRAL PUBLIC WORKS DEPARTMENT  
ENGINEER ASSOCIATION,  
BENGALURU ZONE,  
REP BY ITS ZONAL SECRETARY,  
SRI. A MALLIKARJUN REDDY,  
S/O. LATE. SRI. A VENKATA REDDY,  
ASSISTANT ENGINEER,  
O/O. EXECUTIVE ENGINEER,  
BCD-3, KENDRIYA SADAN,  
C-WING, 3RD FLOOR,  
BENGALURU 560034.
2. SRI. MANJUNATH R N  
S/O. SRI. R. NATARAJAN,

AGED ABOUT 46 YEARS,  
ASSISTANT ENGINEER,  
O/O. EXECUTIVE ENGINEER,  
HAL PROJECT DIVISION-I,  
4<sup>TH</sup> FLOOR, SH. VISVESVARAYA  
KENDRIYA BHAWAN, DOMLUR,  
NEXT TO CPWD QUARTERS,  
BENGALURU 560039

3. DR. K B SURESH  
MEMBER (JUDICIAL),  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
BENGALURU BENCH,  
1ST AND 2ND FLOOR,  
SH. VISVESVARAYA KENDRIYA BHAWAN,  
DOMLUR, NEXT TO CPWD QUARTERS,  
BENGALURU 560039
4. SHRI. C V SANKAR  
MEMBER (ADMINISTRATIVE),  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
BENGALURU BENCH,  
1ST AND 2ND FLOOR,  
SH. VISVESVARAYA KENDRIYA BHAWAN,  
DOMLUR, NEXT TO CPWD QUARTERS,  
BENGALURU 560039

... RESPONDENTS

(BY SRI P A KULKARNI, ADVOCATE FOR C/R1 & R2  
NOTICE TO R3 & R4 IS DISPENSED WITH VIDE ORDER  
DTD 01/08/2019 )

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
& 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET  
ASIDE ORDER DATED 25.07.2019 (ANNEXURE-A) PASSED  
IN CONTEMPT PETITION (CIVIL) NO.170/00041/2019 IN  
ORIGINAL APPLICATION NO.170/00586/2019 BY THE R-3  
& 4 AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND  
RESERVED ON 11.09.2019 AND COMING ON FOR  
PRONOUNCEMENT OF ORDERS, THIS DAY **DEV DAS J**,  
MADE THE FOLLOWING:

**COMMON ORDER**

The Union of India along with the Central Public Works Department and the Director General, CPWD, is before this Court in these two writ petitions. W.P.No.31668/2019 was filed on 29.07.2019, calling in question orders passed by the Central Administrative Tribunal, (hereinafter referred to as the "Tribunal") in Contempt Petition (Civil) No.170/00041/2019 and seeking transfer of the Original Application No.170/00586/2019 to any other Bench which did not comprise of the two Presiding Officers, who passed the impugned orders therein. W.P.No.33243/2019 was filed, assailing the final order passed by the Tribunal in O.A.No.170/00586/2019. Both the petitions were heard together and we propose to dispose of the petitions by this common order.

2. A brief background would be necessary to understand the factual matrix behind the two writ petitions. The 1<sup>st</sup> respondent is an Association of Engineers belonging to the CPWD, while the 2<sup>nd</sup> respondent is an Assistant Engineer of CPWD, at

Bengaluru. The respondents filed O.A.No.170/00586/2019, calling in question an order dated 25.03.2019, passed by the Director General, CPWD, seeking to revise the organizational structure of CPWD, as directed by the Ministry of Housing and Urban Affairs, which had acted on the suggestions made by Implementation Committee and recommendation of a consultant known as 'Ernst and Young'. The Tribunal had granted an ex parte interim order of stay on the order dated 25.03.2019. When the interim order was not vacated, the petitioners herein approached this Court in W.P.No.27519/2019. This Court, disposed of the writ petition on 12.07.2019, requested the Tribunal to hear both the parties, particularly on the question of jurisdiction and *locus* of the applicants before the Tribunal and thereafter consider the interim prayer made by the applicants.

3. In the meanwhile, the applicants before the Tribunal filed a Contempt Petition alleging that the respondents in the application had disregarded the interim order passed by the Tribunal. On 11.06.2019,

the Tribunal issued notice to the contemnors. After entering appearance, the contemnors filed their reply on 19.07.2019. On 23.07.2019, the O.A. and Contempt Petition were listed together for final disposal. The order passed by this Court on 12.07.2019, in W.P.No.27519/2019 was brought to the notice of the Tribunal. The Tribunal adjourned the Original Application to 30.07.2019, while Contempt Petition was adjourned to 23.07.2019. On 23.07.2019, in the Contempt Petition, the following order was passed:

“We heard both the learned counsels, the Additional Director General and the Chief Engineer of CPWD. We have taken some expiations to Annexure-C10 and C-12. So we want some explanation. Shri.P.A. Kulkarni, learned counsel for the applicants, states that even thereafter also additional orders have been passed. We would like some explanation of the DG on the matter. Let him be personally present on 25.07.2019 and explain it. Post on 25.07.2019.”

4. In the memorandum of writ petition, in W.P.No.31668/2019, it is stated that the Tribunal instructed the Director General, CPWD, to come

forward, at the Bar and the Presiding Officers started posing questions to the DG. The question and answers were recorded by the Tribunal. It is averred that though objections were raised by the learned counsel for the contemnors, the Tribunal proceeded till lunch break. It is stated that the DG was put under tremendous pressure and humiliation. Thereafter, the DG, Chief Engineer and another officer were asked to have lunch in Court Hall No.2. The learned Presiding Officers had lunch with the three officers along with the learned counsels. After lunch, a draft of the question and answers was given to the officers to correct the same and return it. At that juncture, police arrived at the Tribunal premises. It is stated that the officers who were under tremendous pressure, made some correction, without the benefit of consulting the personal staff and officers. Thereafter, the fine print of the question and answers were given to the officers for their signature. Having no other option, it is stated that the officers signed the paper.



5. It is further stated that all other matters were adjourned and only those persons relating to the contempt proceedings were present in the Court Hall. It is stated that the officers were told by the Presiding Officers that they will be punished for contempt and imprisoned for one month. The 3<sup>rd</sup> petitioner, DG was enquired about his health conditions. The DG informed the Tribunal that he was diabetic and suffering from blood pressure and other ailment. It is stated that though the learned counsels representing the contemnors objected to the procedure adopted by the Tribunal on the ground that punishment could not be imposed without hearing the contemnors, the Tribunal refused to adjourn the matter.

6. It is stated that the judicial member of the Tribunal told the DG that if he gives an undertaking to withdraw all orders passed subsequent to 04.06.2019 and tender an apology, punishment will not be imposed. The DG, stated that the orders were approved by the Secretary to the Government of India, MoHUA and other authorities and some of the orders were passed after

approval from the Appointments Committee of the Cabinet and he is not the competent person to withdraw such orders, the Presiding Officers reacted saying that the Secretary to the Government will also have to face contempt proceedings. It is stated that under such circumstances, under duress, the 3<sup>rd</sup> petitioner DG, prepared an undertaking stating that orders subsequent to 04.06.2019 will be withdrawn. In such circumstances, the Tribunal passed the impugned order dated 25.07.2019 accepting the undertaking given by the 3<sup>rd</sup> petitioner herein to cancel all orders passed subsequent to 04.06.2019 and dropped the contempt proceedings. The contemnors were set free.

7. It is in this background that W.P.No.31668/2019 was filed, assailing the order dated 25.07.2019, passed by the Tribunal, along with a prayer to transfer the Original Application to any other Bench. On 01.08.2019, this Court passed an interim order staying the operation and execution of the order dated 25.07.2019, in Contempt Petition (Civil) No.170/00041/2019.

8. The Original Application was disposed of by order dated 30.07.2019, remitting the matter to the Cabinet Secretary, Government of India to convene another National level (JCM) meeting within the next three months to look into the grievances of the employees after calling for inputs from all stakeholders and to take an appropriate decision. The Department was permitted to take such emergency remedial measures as they deem fit, generally, while the structuring and all its consequences were to be kept in abeyance in the interregnum. Being aggrieved, the Union of India, CPWD and the DG, CPWD preferred writ petition No.33243/2019.

9. Sri. K.M.Nataraj, learned Additional Solicitor General of India, submitted that there cannot be a better example of the dignity and majesty of judiciary being lowered to a sorry state of affairs. The learned Additional Solicitor General submitted that the proceedings and both the impugned orders passed by the Tribunal is visibly prejudiced, biased, actuated by irrelevant consideration and wholly without jurisdiction.

10. On the question of jurisdiction and *locus*, it was submitted that when this Court had specifically requested the Tribunal, by order dated 12.07.2019, in W.P.No.27519/2019, that the question of *locus standi* of the applicants before the Tribunal and the jurisdiction of the Tribunal in entertaining the application was required to be considered before proceeding to pass orders, it was incumbent upon the Tribunal to decide the preliminary issue. It is submitted that inspite of the said request made by this Court, the Tribunal has acted in utter disregard and it took up the proceedings without answering the preliminary issues. The learned Additional Solicitor General draws the attention of this Court to Section 14 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Tribunals Act' for short) to contend that the jurisdiction power and authority of the Tribunal is restricted to matters concerning services under the Union of India, or any Corporation or society owned or controlled by the Central Government. It was also submitted that the word 'service matters' has been defined in Section 3(q)

and in terms of the said definition, the prayer made by the respondents herein before the Tribunal does not fall within the said definition and therefore the Tribunal should have rejected the application on that ground.

11. On the question of *locus*, it was submitted by the learned Additional Solicitor General that the Original Application was filed by the first respondent which claims to be an Association of Central Public Works Department Engineers, represented by its Zonal Secretary. The second applicant before the Tribunal is an Assistant Engineer in the Office of the Executive Engineer, HAL Project Division-I. No details are forthcoming in the Application as to the status of the Association, its members, whether it forms part of an Association encompassing all the Engineers in the country or whether it is restricted to Engineers within the State. The Application is bereft of the mandatory information as to whether the Association had passed any resolution on deciding to file the Application, whether the Officer who verified the Application was empowered to do so, etc.

12. It was further submitted that the applicants before the Tribunal sought to assail orders seeking to revise the organizational structure of CPWD, as directed by the MoHUA. In this regard, the learned Additional Solicitor General relies upon the following decisions:

- (1) P.U.Joshi And Others Vs. Accountant General, Ahmedabad And Others, (2003) 2 SCC 632; and
- (2) Union of India Vs. Pushpa Rani And Others, (2008) 9 SCC 242.

13. While placing reliance on the judgments, it was submitted that it was a settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres fall within the exclusive domain of the employer. Moreover, the Central Government was in the process of restructuring CPWD and there was no cause of action for the applicants before the Tribunal to question the same. How and in what manner the order impugned before the Tribunal affected the applicants was not looked into by the Tribunal.

14. The learned Additional Solicitor General submits that the Presiding Officers on the Bench of the Tribunal which heard the Application were prejudiced and biased, which was evident from a reading of the orders passed by the Tribunal. While relying upon a decision of the Hon'ble Supreme Court in the case of ***State of W.B. and Others Vs. Shivananda Pathak and Others***, reported in **(1998) 5 SCC 513**, it was submitted that the Presiding Officers were personally biased, biased on the subject matter in dispute and biased on the policy. To substantiate the same, the learned Additional Solicitor General submitted that the impugned order passed by the Tribunal starts by imputing serious allegations against the consultant 'Ernst & Young'; it proceeds on the footing that the Central Government was guilty of engaging services of a consultant on whom serious charges of illegality were heaped; information which was not placed on record and beyond the pleadings were relied upon; unfounded allegation as regards the competence of the Director

General, CPWD, made by the applicants was accepted without addressing itself to the veracity of the same.

15. It was also submitted that the Presiding Officers were swayed by irrelevant considerations that the consultants were facing serious criminal charges in many countries; the Tribunal placed reliance on a letter dated 22.07.2019 addressed to the Secretary, MoHUA, by the National Council (JCM). In this regard, the decision in **Gowrishankara Swamigalu Vs. State of Karnataka And Another**, reported in **(2008) 14 SCC 411** was relied upon.

16. While drawing the attention of this Court to the averments made in the memorandum of writ petition in W.P.No.31668/2019 and the orders passed by the Tribunal, it was submitted that the Presiding Officers have thrown the law of procedure to wind and have exhibited their personal bias against the Director General, CPWD. The DG, who was summoned to offer explanation, was taken by surprise when the Presiding Officers started questioning the DG and recording the answers given by the DG, as if the DG was put into a



witness box. The DG was not permitted to get instructions from his staff. The high ranking Officers of CPWD, including the DG were confined to the Court room, without being allowed for lunch break and having put them under tremendous pressure, an undertaking was extracted by the Presiding Officers.

17. The learned Additional Solicitor General further submitted that the ultimate direction given by the Tribunal is to keep the order passed by the DG, CPWD in abeyance, in the interregnum, while remitting the matter to the Cabinet Secretary to convene another National Level (JCM) meeting within three months to look into the grievances of the employees after calling for inputs from all stakeholders and then the DG was to take appropriate decision. It is submitted that such a direction was impermissible and contrary to established principles of law. In this regard, reliance was placed on ***BALCO Employees' Union (Regd.) Vs. Union of India and others***, reported in **(2002) 2 SCC 333**.

18. Sri P.A.Kulkarni, learned Counsel appearing for the respondents, at the threshold, raises an

objection regarding maintainability of the writ petition which questions the orders passed by the Tribunal in contempt proceedings. It is submitted that the power to punish for contempt has been envisaged on the Tribunal under Section 17 of the Tribunals Act, bestowing same jurisdiction, powers and authority in respect of contempt of itself as a High Court has under the provisions of the Contempt of Courts Act, 1971. Further, in view of an appeal provided under Section 19 of the Contempt of Courts Act to the Supreme Court, a writ petition under Article 226 or 227 is barred.

19. Sri P.A.Kulkarni, learned Counsel places reliance on the following judgments:

1. T.Sudhakar Prasad Vs. Govt. of A.P. and Others, (2001) 1 SCC 516;
2. R.Mohajan and Others Vs. Shefali Sengupta and Others, (2012) 4 SCC 761;
3. The Accountant General (A and E), Karnataka, Bangalore and Others Vs. S.Srinivas and another, (2001) SCC OnLine Kar 405 and
4. Unreported judgment in W.P.No.47335/2014 decided on

11.11.2014, in the case of Sri  
D.J.Bhadra Vs. Shri S.Srinivasa.

20. Per contra, the learned Additional Solicitor General, on the question of maintainability of the writ petition challenging the orders passed by the Tribunal in the contempt proceedings, submits that the Hon'ble Supreme Court, in both the cases referred by the learned Counsel for the respondents, did not hold that a petition under Article 226 of 227 was barred in the light of appeal remedy provided under Section 19 of the Contempt of Courts Act. On the other hand, reliance was placed on atleast two decisions of the Hon'ble Supreme Court in the cases of ***State of Maharashtra Vs. Mahboob S. Allibhoy and Another***, reported in (1996) 4 SCC 411 and ***Midnapore Peoples' Coop. Bank Ltd. and Others Vs. Chunilal Nanda and Others***, reported in (2006) 5 SCC 399, to contend that an appeal under Section 19 is maintainable only against an order or decision of the Tribunal passed in exercise of its jurisdiction to punish for contempt, i.e., an order imposing punishment for contempt. However, the two

orders passed by the Tribunal during the course of the contempt proceedings were not orders imposing punishment for contempt. Even otherwise, it is submitted that availability of an appeal remedy before the Supreme Court, under Section 19, is not a total bar against the extraordinary jurisdiction vested with the High Court under Articles 226 and 227 of the Constitution of India.

21. Since the question of maintainability of writ petition challenging orders passed by the Tribunal has been raised, we shall proceed to answer the said question as a preliminary issue. In **T.Sudhakar Prasad** (supra), the question which arose for consideration was whether Administrative Tribunals set up under the provisions of the Tribunals Act, do they or do they not have power to punish for their contempt? While answering the said question, clarifying the position with reference to the seven Judges' Bench decision in **L.Chandra Kumar Vs. Union of India, (1997) 3 SCC 261**, it was held that Administrative Tribunals were statutorily empowered to punish for contempt. Section

17 of the Tribunals 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 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. The need for enacting Section 17 of the Tribunals Act was explained, firstly, to avoid doubts and secondly, because the Tribunals are not 'courts of record' as provided under Article 215 of the Constitution. Most importantly, in the context of the question before this Court, it has been held by Their Lordships that, "*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.”*

22. In **R.Mohajan** (supra), the question which arose for consideration was whether an appeal under Section 19 of the Contempt of Courts Act could be invoked against an order passed by the Tribunal in contempt proceedings, without exercising the remedy before the High Court under Articles 226/227. The answer to the said question was held in the affirmative. Therefore, in our opinion, in both the matters the question as to whether a petition under Article 226/227 was maintainable on interim orders passed by the Tribunal, did not arise.

23. In **Baradakanta Mishra Vs. Mr.Justice Gatikrushna Misra**, reported in **(1975) 3 SCC 535**, it was held that an order declining to initiate a proceeding for contempt amounts to refusal to assume or exercise jurisdiction to punish for contempt and, therefore, such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. In **Purshotam Dass Goel Vs. Hon’ble Mr.Justice B.S.Dhillon**

**and Others**, reported in **(1978) 2 SCC 370**, it was held that there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to the Supreme Court as a matter of right from each and every such order made by the High Court. In **D.N.Taneja Vs. Bhajan Lal**, reported in **(1988) 3 SCC 26**, it was held that appeals under Section 19 would lie only against the orders punishing the contemnor for contempt and not any other order passed in contempt proceedings. In **Maibooob S. Allibhoy** (supra), it was held that if the expression 'any order' is read independently of the word 'decision' in sub-section (1) of Section 19, then an appeal shall lie under sub-section (1) of Section 19, even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result. In **J.S.Parihar Vs. Ganpat Duggar And Others**, reported in **(1996) 6 SCC 291**, it was held as follows:

*“Therefore, an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemner has been*

*passed. In this case, the finding was that the respondents had not wilfully disobeyed the order. So, there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.”*

24. Summarising the position emerging from the above decisions, the Hon'ble Supreme Court, in ***Midnapore Peoples' Coop Bank Ltd. And Others*** (supra) has categorically held that an appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19. It was also held that in special circumstances, they may be open to challenge under Article 136 of the Constitution.

25. That being the position, and since it has been declared by the Hon'ble Supreme Court that while



reading the provisions of the 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, it can safely be held that an appeal under Section 19 is maintainable only against an order or decision of the Tribunal passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19.

26. The orders of the Tribunal impugned in W.P.No.31668/2019, arising out of the contempt proceedings are not orders imposing any punishment. The order dated 23.07.2019, directs personal presence of the DG, CPWD on the next date of hearing, calling for explanation. The order dated 25.07.2019 says that the testimony of the DG, CPWD, New Delhi, was recorded and he files an undertaking to cancel all the impugned

orders and expresses his regret. Accepting the apology, the contempt proceedings are closed. The alleged contemnor is set free. Therefore, there is no order imposing punishment for contempt, in exercise of the Tribunal's jurisdiction to punish for contempt. As held by the Hon'ble Supreme Court in **Midnapore** (supra), an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor is appealable under Section 19. As a result, we hold that the writ petition in W.P.No.31668/2019, challenging the orders of the Tribunal in the contempt proceedings, is maintainable.

27. Even otherwise, the plenary powers of this Court in exercising judicial review under Articles 226 and 227, encompassing the territories within its jurisdiction is not in derogation of the power conferred on the Hon'ble Supreme Court by Clause (2) of Article 32, as provided in Clause (4) of Article 226 of the Constitution. In the case of **State of U.P. Vs. Mohammad Nooh**, a Constitutional Bench of the Hon'ble Supreme Court has held that "there is no rule, with regard to

certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided that the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law.” Therefore, the contention of the learned Counsel for the respondents that there is a total bar of jurisdiction of this Court to entertain a writ petition, in view of an appeal remedy provided under the statute, cannot be acceptable.

28. The next question is whether the Tribunal had jurisdiction to entertain an application which sought to question an order passed by a competent authority, seeking to revise the organizational structure of CPWD, as directed by the MoHUA which was acting on the suggestions made by implementation committee; and whether the issue raised therein is a 'service matter' as defined in the Tribunals Act? In this regard, it has been held by the Hon'ble Supreme Court in **P.U.Joshi** (supra) that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition/prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose

itself by substituting its views for that of the State. It has been further held that there is no right in an employee of the State to claim that Rules governing conditions of his service should be forever the same and as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new Rules relating to even an existing service. The said position has been reiterated in the case of **Pushpa Rani** (supra). What is noticeable is that the Union of India is in the process of revising the organizational structure of CPWD. In the light of the ruling of the Hon'ble Supreme Court that in the matter of structuring or restructuring or reorganizing the Department, which is a policy matter, within the exclusive domain of the employer, there cannot be judicial review. It is also evident that unless and until the restructuring is made, an employee cannot rush to the Courts complaining of any grievance, since the

restructuring has not taken shape and the matter lies premature. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to *mala fides*.

29. A reading of the memorandum of the Original Application filed by the respondents herein before the Tribunal would indicate that the Association is aggrieved by the appointment of the present DG, CPWD and the fact that another Officer who was senior to him has been overlooked for promotion. An allegation is made that he is temporarily appointed and therefore, he could not have passed any order. Another grievance that is forthcoming is that the views of the Association were not considered before taking a decision to think of restructuring or reorganizing the Department. In this regard, as rightly pointed out by the learned Additional Solicitor General, in **BALCO Employees'** case (supra), the Hon'ble Supreme Court has held that in a matter of governance and administration whenever such policy

decisions are taken, it is desirable that there should be wide range of consultations including considering any representations which may have been filed, but there is no provision in law which would require a hearing to be granted before taking a policy decision. In exercise of executive powers, policy decisions have to be taken from time to time. It will be impossible and impracticable to give a formal hearing to those who may be affected whenever a policy decision is taken. In case of a policy decision, however, it is impracticable, and at times against the public interest, to do so, but this does not mean that a policy decision which is contrary to law cannot be challenged. Not giving the employees an opportunity of being heard cannot *per se* be a ground of vitiating the decision. If the decision is otherwise illegal as being contrary to law or any constitutional provision, the persons affected can impugn the same, but not giving a pre-decisional hearing cannot be a ground for quashing the decision.

30. In the light of the above, when we look at the definition of the term 'service matters', as defined in

Section 3(q) of the Tribunals Act, one may argue that this matter may fall under the category, “any other matter whatsoever” in Sub-clause (v) of Clause (q) of Section 3. As noted earlier, in **P.U.Joshi** (supra), it has been held that the scope for challenging amendments or changes brought to the conditions of service is ordinarily not maintainable, except where such amendments or changes affect the rights or benefits already earned, acquired or accrued at a particular point of time. In that view of the matter, we find that the memorandum of Application does not raise any such specific contention that would point out to infringement of any particular right or benefit already earned, acquired or accrued. For the foregoing reasons, we hold that the Original Application was not maintainable and the prayers made therein could neither have been considered nor could be granted.

31. On going through the impugned order, we find the Tribunal has directed the Cabinet Secretary to reconvene another National Level (JCM) Meeting within the next three months to look into grievances of the



employees after calling for inputs from all stakeholders and thereafter take an appropriate decision. While doing so, the Tribunal directed the restructuring and all its consequences shall be kept in abeyance in the interregnum. In the light of the decision of the Hon'ble Supreme Court referred above, we have no hesitation to hold that the Tribunal has acted beyond its powers of judicial review.

32. More importantly, on an earlier occasion, when the petitioners herein had approached this Court in W.P.No.27519/2019, this Court disposed of the said writ petition by order dated 12.07.2019 while requesting the Tribunal to hear both the parties, particularly on the question of jurisdiction and *locus* and thereafter consider the interim prayer made by the applicants. Now that the Tribunal has gone ahead to dispose of the Original Application, without whispering anything about the jurisdiction, maintainability of the Application and the *locus* of the applicants, we may only observe that the Tribunal has not acted in the best interest of justice.

33. The question of *locus* of the respondent-Association in maintaining an Original Application before the Tribunal, is left open to be answered in an appropriate case.

34. As a result, we proceed to pass the following:

**ORDER**

1. Both the writ petitions are ***allowed***.
2. The impugned order dated 30.07.2019 in Original Application No.170/00586/2019 passed by the Central Administrative Tribunal is hereby quashed and set aside.
3. The impugned order dated 25.07.2019 in Contempt Petition (Civil) No.170/00041/2019 stands modified to the extent that the undertaking dated 25.07.2019 given by the third petitioner herein i.e., Sri Prabhakar Singh, before the Tribunal is hereby recalled and it is hereby declared that the said undertaking shall not bind the petitioners herein.
4. Consequently, the Original Application No. 170/00586/2019, stands dismissed.

I.A.No.1/2019 for dispensation does not survive  
for consideration.

Sd/-  
JUDGE

Sd/-  
JUDGE

DL/JT