

A

STATE OF MAHARASHTRA AND ANR.

v.

DR. S.S. SRIVASTAVA AND ANR.

FEBRUARY 10, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Administrative Tribunals Act, 1985 :*

C

*Central Administrative Tribunal—Powers of—On application of employee Tribunal giving interim direction to Government to consider the applicant for promotion to Senior Scale and Junior Administrative Grade—Government considered the case of employee and found him not fit for promotion—Contempt petition by employee—Tribunal directing the Government to consider fitness of employee for being promoted to the said Grade; that the order would be as an interim measure and employee would be entitled for arrears—Held, in view of the stand taken by the Government that, as directed by the Tribunal, the case of employee was considered and found that he was not eligible for grant of Senior Time scale, the appropriate course should be that the Tribunal decides the matter on merits—Tribunal exceeded its power in giving the directions even before the matter was considered on merits—Order of Tribunal set aside—Tribunal would decide the matter on merits.*

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 986 of 1997.

F

From the Judgment and Order dated 17.10.96 of the Central Administrative Tribunal, Bombay Bench in C.P. No. 35 of 1996.

D.M. Nargolkar for the Appellants.

In-person for the Respondent.

G

The following Order of the Court was delivered :

Leave granted.

H

We have heard the learned counsel for the appellants and the respondent-in-person.

This appeal by special leave arises from the order passed by the Tribunal in Contempt Petition No. 35/1996 in pending O.A. No. 1156/94. The Tribunal had issued interim directions that "In the circumstances, we hereby direct the respondents as an interim measure to consider the applicant to the Senior Scale and Junior Administrative Grade according to the Rules within a period of two months from the date of receipt of the order. Accordingly, M.P. 11/96 is disposed of in the light of the above. The Respondents are directed to file their reply to the amended C.A. by 14.3.1996. The matter be kept before the Registrar at Nagpur on 14.3.1996." It is stated by the appellants that they have considered the case on June 7, 1996 and found him not fit to the said Senior Time Scale. Thereafter, the respondent filed contempt petition in the Tribunal and the Tribunal has passed the impugned order relevant part of which is as under :

"...the State Government should also consider the fitness of the applicant for being promoted to the Junior Administrative Grade from an appropriate date strictly as per rules within two months from the date of the communication of this order. We make it clear that we are passing this order as an interim measure and the applicant will be entitled for arrears, though the applicant would be entitled for notional fixation of pay on promotion to Senior Time Scale from 1.4.1993."

Thus, this appeal by special leave.

Though the learned counsel for the appellants as well as respondent-in-person seek to raise contentions on merits, we think that this is not an appropriate stage for us to go into the merits in the matter. In view of the stand taken by the appellants that the case of the respondent was considered by the Government and found that he was not eligible for grant of Senior Time Scale, as directed by the Tribunal, the appropriate course should be that the Tribunal may decide the matter on merits and then deal with it according to law. Instead, unfortunately, the Tribunal has exceeded its power in giving the directions, even before the matter was considered on merits. Under these circumstances, the order of the Tribunal stands set aside. The Tribunal is directed to decide the matter on merits and dispose of the main O.A. within a period of two months from the date of the receipt of the order.

The appeal is accordingly allowed.